Supreme Court, U.S.
FILED
JUL 26 1993

No. 93-137

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

MOBILE HOME VILLAGE, INC.,
a corporation of the State of New Jersey,
t/a SOUTH WIND VILLAGE,

Petitioner,

v.

MAYOR AND COUNCIL OF THE TOWNSHIP OF JACKSON, THE JACKSON TOWNSHIP RENT CONTROL BOARD, and THE ESTATE OF KURT H. AND SOPHIE BIELEFELOT,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE APPELLATE DIVISION OF THE SUPERIOR COURT
OF THE STATE OF NEW JERSEY

PETITION FOR WRIT OF CERTIORARI

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July 26, 1993

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QUESTIONS PRESENTED

1. In *Yee v. City of Escondido*, 503 U.S. ___ , 112 S.Ct. 1522 (1992), the U.S. Supreme Court held that the transfer of a premium value to a departing mobile home tenant upon the resale of his home, representing the value of the right to occupy a mobile home pad at a reduced rate under local mobile home rent control ordinances, would constitute an impermissible taking, where the landlord park owner is *required* to submit to the physical occupation of his land. Did the Appellate Division of the New Jersey Superior Court err in applying the ruling in *Yee* to Petitioner's claim, by holding that there was no taking under the Fifth Amendment?

2. Was it error for the Appellate Division of the New Jersey Superior Court to follow an exhaustion doctrine relative to Petitioner's Fifth Amendment taking claim when the applicable laws, on their face, demonstrate that no use other than a mobile home park will be permitted?

LIST OF PARTIES

The caption of the case contains the names of all parties who are Petitioners in this Petition for Writ of Certiorari.* The decision of the Appellate Division of the New Jersey Superior Court, reprinted in Appendix B to this petition, lists all parties to the proceedings in the state court, in the caption of that decision (p. 2a).**

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*The Petitioner is a wholly-owned subsidiary of United Mobile Homes, Inc. United Mobile Homes, Inc. is a publicly owned company whose shares are listed on NASDAQ, trading under the symbol UMHI.

**The Estate of Kurt and Sophie Bielefelot filed an answer to the Petitioner's complaint filed with the Law Division of the Superior Court of New Jersey, Ocean County. Thereafter, the attorney for the Estate was relieved as counsel for the Estate by Order filed on May 6, 1991. The Estate did not participate in the trial or any of the subsequent appellate proceedings.

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MOBILE HOME VILLAGE, INC.,
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MAYOR AND COUNCIL OF THE TOWNSHIP OF JACKSON, THE JACKSON TOWNSHIP RENT CONTROL BOARD, and THE ESTATE OF KURT H. AND SOPHIE BIELEFELOT,

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ON PETITION FOR WRIT OF CERTIORARI TO
THE APPELLATE DIVISION OF THE SUPERIOR COURT
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PETITION FOR WRIT OF CERTIORARI

Petitioner, Mobile Home Village, Inc., t/a South Wind Village, prays that a writ of certiorari issue to review the decision and judgment of the Appellate Division of the Superior Court of the State of New Jersey, filed on January 20, 1993, in *Mobile Home Village, Inc. v. Mayor and Council of the Twp. of Jackson, et als.*, Docket No.

A-1757-91T5. A Petition for Certification of this judgment was denied by the Supreme Court of the State of New Jersey, by Order dated April 27, 1993, filed April 29, 1993.

OPINIONS BELOW

The decision of the Appellate Division of the Superior Court of the State of New Jersey, whose judgment is herein sought to be reviewed, was issued on January 20, 1993. This opinion is not reported, and a copy of the court's decision is located at Appendix B (pp. 2a-13a) to this petition. A copy of the Order of the New Jersey Supreme Court denying the Petition for Certification of the judgment appears in Appendix A (p. 1a) to this petition.

The Law Division of the Superior Court of the State of New Jersey in and for the County of Ocean, entered an Order for Judgment dismissing Plaintiff's complaint following a bench trial. A copy of the Order for Judgment appears as Appendix C (pp. 14a-15a), and a copy of the transcript of the trial judge's oral decision appears in Appendix D (pp. 16a-27a) to the petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 *U.S.C.* §1257. The decision and judgment of the Appellate Division of the Superior Court for the State of New Jersey was filed on January 20, 1993. That judgment and decision affirmed the Order for Judgment of the Law Division of the Superior Court, Ocean County, of the State of New Jersey, dismissing Plaintiff's complaint following a bench trial.

A timely petition for the discretionary review of the Supreme Court of the State of New Jersey was denied by Order dated April 27, 1993, filed on April 29, 1993.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

FIFTH AMENDMENT

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of . . . property, without due process of law; nor shall private property be taken for public use, without just compensation.

NEW JERSEY STATUTES

A significant number of New Jersey statutes regulate the landlord-tenant relationship between a mobile home park owner and its tenants, and make this case distinguishable from *Yee v. City of Escondido,* 503 U.S. ___ , 112 S.Ct. 1522 (1992). Those which are pertinent to the Petitioner's claims in the case at bar are summarized below.

N.J.S.A. 46:8C-3, which is a part of the Mobile Home Owner's Rights Act and appears in Appendix G, at p. 70a, requires that a mobile home park owner must permit a resident to resell a mobile home to another qualified tenant, without removing the home from the owner's property. An owner cannot unreasonably withhold consent to such a transfer.

N.J.S.A. 46:8C-21 is also a part of the Mobile Home Owner's Rights Act, and it provides that:

> "No agency of municipal, county or State government, or of any agency or instrumentality thereof,

> shall approve or take any other final action upon any application for a variance which would result in the removal or relocation of mobile home owners residing in a mobile home park, without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of those mobile home owners."

N.J.S.A. 2A:18-61.1, which appears in Appendix H, p. 72a, specifies the exclusive reasons for which a residential tenant may be evicted from a mobile home park or other rental property in the State of New Jersey. Among the permissible reasons for eviction is "the owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile home park . . . ." *N.J.S.A.* 2A:18-61.1(h). (Appendix H at p. 74a).

If a landlord wishes to close a mobile home park and retire it from residential use, the provisions of *N.J.S.A.* 2A:18-61.1b are also applicable, and they appear in Appendix H at p. 76a. Briefly stated, this statute requires that a tenant cannot be evicted from a mobile home park on the basis of retirement of the property from that use, unless the landlord has in hand all developmental approvals required by law for an alternate nonresidential use. Furthermore, the eighteen months' prior notice to the tenants that is required (see below) must specify the proposed nonresidential use to which the premises will be permanently retired.

N.J.S.A. 2A:18-61.2, which appears in Appendix H, p. 77a, specifies the type and amount of notice required in order to evict a tenant for the various permitted causes for eviction. Relevant here is paragraph (d), which provides that where a landlord is alleging permanent retirement of a mobile home park to a nonresidential use,

eighteeen months' notice prior to the institution of an eviction action is required.

N.J.S.A. 40:55D-1, *et seq.*, is the New Jersey Municipal Land Use Law. Specifically relevant to Petitioner's case is *N.J.S.A.* 40:55D-62, paragraph (a) of which empowers municipal governing bodies to adopt or amend zoning ordinances regulating the nature and extent of the uses of land and buildings in their municipality. This statute appears in Appendix I at p. 79a.

When a land owner wishes to engage in a use other than that which is permitted by the applicable municipal zoning ordinance, it must seek a use variance by application to the municipal board of adjustment. *N.J.S.A.* 40:55D-70(d) provides in pertinent part as follows:

> "The board of adjustment shall have the power to:
>
> * * *
>
> d. In particular cases and for special reasons, grant a variance to allow departure from regulations pursuant to article 8 of this act to permit: (a) a use or principal structure in a district restricted against such use or principal structure, ... A variance under this subsection shall be granted only by affirmative vote of at least five members, in the case of a municipal board, ... No variance or other relief may be granted under the terms of this section unless such variance or other relief can be granted without substantial detriment to the public good and will not substantially impair the intent and the purpose of the zone plan and zoning ordinance."

The reference to "article 8 of this Act" above refers to *N.J.S.A.* 40:55D-62, *et seq.*

If variance approvals could be secured despite the unavailability of alternative sites for the existing tenants' mobile homes, there is still another statutory/regulatory scheme which can delay eviction for five years for all tenants, or *forty* years for senior citizens. Petitioner's mobile home park is currently occupied primarily by senior citizens, because the Respondent Township of Jackson has also imposed an age restriction on the park. *N.J.S.A.* 2A:18-61.6 through 61.12, *N.J.A.C.* 5:24-1.1, 1.2, 1.6, 1.7 and 1.8. (Appendix L, pp. 116a-126a, 128a-132a).

There is yet another section of the New Jersey statutes pertaining to the tenancy relationship between landlords and residential tenants that relates to the above cited land use and tenancy provisions. It is known as the Senior Citizens and Disabled Protected Tenancy Act. Of particular importance here is *N.J.S.A.* 2A:18-61.23, which is a statement of the legislative findings and declarations which led to the passage of these statutes. *Inter alia,* this statute states that "[t]he Legislature . . . declares that it is in the public interest of the State to avoid the forced eviction and relocation of senior citizen tenants wherever possible . . . ." (Appendix L, p. 126a)

JACKSON TOWNSHIP MUNICIPAL ORDINANCES

The Jackson Township Ordinance, Rent Control for Mobile Home Parks, appears in Appendix J at p. 81a to this petition. Conspicuous by its absence in that ordinance is any provision for vacancy decontrol in the event an existing resident sells their mobile home in place.

Jackson Township Ordinance 01-89, which amends and supplements the Zoning Code of Jackson Township, appears in Appendix K to this petition at p. 109a. That

specific ordinance provides that the only permitted use for petitioner's property that is the subject of this litigation is for a residential mobile home park.

STATEMENT OF CASE

In *Yee v. City of Escondido,* 503 U.S. ___, 112 S.Ct. 1522 (1992), the United States Supreme Court addressed the issue of whether a physical taking arises due to the failure to provide vacancy decontrol in a rent controlled mobile home park. Petitioner here argues that in the *Yee* decision, which held that there was no physical taking under California's rent control/statutory scheme, the Court recognized that where the landlord is subject to such a regulatory scheme, *and* is forced to continue to use its land for mobile home rentals, then a physical taking has occurred. The Supreme Court found no physical taking in *Yee* because the possessory rights were voluntarily given, in the first place, to the tenants by the landlord, and governmental action had neither created the tenants' possessory interests nor required that they be continued.

The requisite government action does exist here, because the Petitioner's land was intentionally rezoned exclusively for mobile home park use after rent controls were enacted, and after the state residential tenancy laws were amended to give municipalities the power, through zoning, to make mobile home park closure impossible. Since the use variance procedure has endless alternatives for relief, exhaustion of administrative remedies is not possible. Even if it were possible, state law requires relocation of tenants before such a variance is approved. Since developmental approvals are now out of reach, evictions are not possible and closure of a mobile home park is not possible. The municipality here has required

that the property continue to be used as a mobile home park, so that physical occupancy by tenants is now part of a governmental mandate. A taking has occurred.

PROCEDURAL BACKGROUND AND HOW THE FEDERAL QUESTIONS AROSE

Petitioner is the owner of a 250 unit mobile home park known as South Wind Village, located in Jackson Township, Ocean County, New Jersey. This mobile home park is subject to the provisions of Chapter 86 of the Jackson Township Ordinances, "Rent Control for Mobile Home Parks".

Sometime in late 1989, the last surviving tenant of the Bielefelot family died. They owned a 1972 Forest Park model mobile home, and they were leasing a rent controlled mobile home space in South Wind Village, located 523 Fifth Street. Their rent controlled rent was $190.30/month. Their heirs, who lived elsewhere, intended to sell the home and leave it on the rent controlled space.

The Rent Increase Application

On January 19, 1990, Petitioner filed an application seeking a rent increase due to this impending change in tenancies. Although no section of the applicable municipal rent control ordinance authorized such an application, Petitioner brought it in reliance upon the then recent decision of the Ninth Circuit Court of Appeals in *Hall v. City of Santa Barbara,* 833 F.2d 1270 (9th Cir. 1987) *cert. denied* 485 U.S. 940, 108 S.Ct. 1120 (1988). That case held that allowing an outgoing tenant to sell the right to occupy a rent controlled mobile home space, along with the sale of his or her mobile home, where a quantifiable premium is received on the sale price by

the outgoing tenant, represented the value of the right to occupy the mobile home space at a reduced rent. The transfer of that property right to a selling tenant constituted a physical taking of the landlord's property without just compensation.

The Rent Control Board of Jackson Township conducted hearings on this application on March 9 and April 3, 1990. Petitioner presented the expert testimony of a commercial real estate appraiser. (Appendix F, pp. 60a-64a). It was petitioner's expert's opinion that a fair market rent for these mobile home sites would be $325.00/month. He determined this by looking at the mobile home pad rental market, which revealed that in Fountainhead Mobile Home Park (also located in Jackson Township), which was selling new mobile homes on newly constructed sites not subject to rent control,[1] the landlord was renting new spaces for $325.00/month.

Petitioner's expert had also investigated the sale being undertaken by the Estate, and he had determined that the mobile home in question was being offered for sale at the price of $25,000.00. He opined that the home's

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[1] Section 86-18 of the Jackson ordinance provides an exception to rent control for a "rental space being rented for the first time, or being rented as the result of the vacating of the . . . space by a previous tenant by the removal by that tenant of his mobile home . . . ." (Appendix J, p. 105a). Thereafter, rent control applies. The rationale here is obvious. Controlling the rent on a vacant space does not serve a legitimate purpose of rent control. Market forces will adequately protect prospective tenants, who will make their independent decision on whether to rent a given mobile home space without the impediment of already being tied into a particular location. The same rationale should apply to resales in place, as the prospective tenant has the same freedom of choice.

resale value would be different if the market rate lot rent of $325.00, instead of the rent controlled lot rent of $190.30, could be charged to the new tenant. The resale price would decrease substantially with the higher rent.

The expert indicated that there would be a three-step procedure that he would use as an appraiser to measure the resale price of the home with the higher rent. First, the market rent of $325.00 is compared with the rent controlled rent of $190.30, which reveals a difference of $135.00/month. This difference of $135.00 is then annualized and capitalized at a market rate, "which would be a rate at which equity capital could be attracted to such investment . . . ." He concluded that 9.5% would be a sufficient rate to attract equity capital to such a venture, and using that 9.5% rate, he arrived at the conclusion that the rental difference was worth slightly over $17,000.00. Accordingly, based upon an asking price of $25,000.00, he concluded that there was a ". . . . net residual value to the home of $8,000.00." (Appendix F, p. 63a). In short, the former tenants' Estate had a mobile home worth *$8,000.00* that it could sell for *$25,000.00.*

At the April 3, 1990 meeting, the Respondent Rent Control Board denied any relief, concluding that it was not permitted under the Jackson Township rent control ordinance. The matter was appealed to the Respondent Jackson Township Mayor and Council. On May 2, 1990, they denied all relief. Both the Respondent Rent Control Board and the Respondent Mayor and Council of Jackson Township completely ignored the Petitioner's reliance on the physical takings argument based upon the Ninth Circuit's decision in *Hall, supra.*

The Trial Court Proceedings

On May 17, 1990, Petitioner filed its Complaint in Lieu of Prerogative Writs, alleging that the decisions of the Rent Control Board and the Township Mayor and Council had resulted in a physical taking of Petitioner's property without just compensation, contrary to *Hall, supra,* and to the subsequently decided Third Circuit Court of Appeals case, *Pinewood Estates of Michigan v. Barnegat Twp.*, 898 F.2d 347 (3d Cir. 1990). Petitioner also alleged a violation of its civil rights under 42 *U.S.C.* §1983.

Answers were filed by the Rent Board, the Township Mayor and Council, and the Estate of Kurt H. and Sophie Bielefelot. On May 6, 1991, an Order was entered relieving counsel for the Estate of any further duty to participate, and in fact the Estate did not participate in this matter from that point forward.

The matter proceeded to trial on the issue of liability only on September 20, 1991. (Bifurcation of the damages issue had been ordered in the pretrial order.) On October 30, 1991, the Honorable Rosalie B. Cooper, J.S.C., entered an Order for Judgment (Appendix C, pp. 14a-15a), finding that the absence of vacancy decontrol did not render the Jackson Township rent control ordinance unconstitutional, and she dismissed Petitioner's complaint.

The Appeal

Petitioner timely filed its appeal with the Appellate Division of the Superior Court of New Jersey. While the appeal was pending, the United States Supreme Court's decision in *Yee v. City of Escondido, supra,* was handed down, which added a new wrinkle to the physical takings

fabric, namely that the continuing occupation of the property in question had to be required via government mandate, in order for a physical taking to be found. *Yee*, 503 U.S. at ___ , 112 S.Ct. at 1528. Petitioner argued that not only did it satisfy the *Hall* and *Pinewood Estates* criteria for a physical taking, but in fact, it also satisfied the newly announced additional criterion of *Yee*. Even though Petitioner had not exhausted its administrative remedies by seeking to change its use from a mobile home park to something else, Petitioner argued that the applicable New Jersey laws and Jackson Township municipal ordinances, on their face, make it impossible to do so, and therefore exhaustion cannot be required prior to finding that a compensable physical taking has occurred.

The appellate division affirmed the trial court's decision, and in doing so, relied upon the Petitioner's lack of attempts to change the use of the subject property. Petitioner timely filed a Petition for Certification of the judgment with the New Jersey Supreme Court, which was denied.

ARGUMENT

THE APPELLATE DIVISION OF THE NEW JERSEY SUPERIOR COURT FAILED TO PROPERLY APPLY THE PRECEDENTS OF FEDERAL SUPREME COURT DECISIONS, IN HOLDING THAT PETITIONER HAD NOT SUFFERED A PHYSICAL TAKING ON THE BASIS THAT IT IS NOT REQUIRED TO USE ITS PROPERTY AS A MOBILE HOME PARK.

The Appellate Division of the New Jersey Superior Court rejected Petitioner's claim that the combined effect of several state statutes and the Jackson Township mobile home park rent control and zoning ordinances amounted to a governmental mandate that Peti-

tioner's property continue to be used as a mobile home park in perpetuity. Because Petitioner had made no effort to change the use of its property to something other than a mobile home park, the appellate division concluded that:

> "[I]t would be wholly speculative to determine whether the untested circumstances required plaintiff to perpetually use its property as a mobile home park. Even though plaintiff might have difficulty changing the use of its property, the statutes and ordinance do not on their face preclude plaintiff from discontinuing use of the land as a mobile home park." (Appendix B, p. 13a.)

Thus, the court below concluded that there could be no physical taking under *Yee v. City of Escondido, supra,* 503 U.S. ___, 112 S.Ct. 1522 (1992). Petitioner respectfully submits that the Appellate Division of the New Jersey Superior Court clearly misapplied and misconstrued the applicable federal and state law in reaching this decision. As set forth in detail below, the possibility of petitioner ever being able to devote this property to a use other than a mobile home park is as inconceivable as pigs learning how to fly. Therefore, to require Petitioner to engage in the futile exercise of applying for approvals for an alternate use cannot and should not be required in order for this Court to determine that a physical taking has occurred.

There are two crucial lines of federal jurisprudence that Petitioner submits must govern the outcome of this case. The first is most succinctly set forth in Justice O'Connor's opinion in *Yee v. City of Escondido, supra,* in which the petitioner was also a mobile home park owner who was alleging, *inter alia,* a physical taking as a result of the combined effect of vacancy control in

the Escondido rent control ordinance and a tenant's right to sell a mobile home on the petitioner's property. In rejecting the landlord's claims of a physical taking in that case, Justice O'Connor wrote:

> "The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land. 'This element of required acquiescence is at the heart of the concept of physical occupation.' *FCC v. Florida Power Corp.*, 480 U.S. 245, 252, 107 S.Ct. 1107, 1112, 94 L.Ed.2d 282, (1987). Thus, whether the government floods a landowner's property, *Pumpelly v. Green Bay Co.*, 13 Wall. 166, 20 L.Ed. 557 (1872), or does no more than require the landowner to suffer the installation of a cable, *Loretto, supra,* the Takings Clause requires compensation if the government authorizes a compelled physical invasion of the property.
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> * * *
>
> "At least on the face of the regulatory scheme, neither the City nor the State compels petitioner, once they have rented their property to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provided that a park owner who wishes to change the use of his land may evict his tenants, albeit with six or twelve months notice. Cal. Civ. Code Ann. §798.56(g). Put bluntly, no government has required any physical invasion of petitioners' property.
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> * * *
>
> "A different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property *or* to refrain in perpetuity from terminating a tenancy." *Yee,* 503 U.S. at ___ , 112 S.Ct. at 1528-1529.

Petitioner submits that this is the "different case" of which Justice O'Connor spoke in *Yee*. As the analysis below will demonstrate, the applicable state statutes and municipal ordinances on their collective face, compel petitioner to continue to operate a mobile home park on its property indefinitely. Therefore, the second relevant line of federal law is that which pertains to the "ripeness" of takings cases. The test for ripeness of a takings case, relative to the exhaustion of administrative remedies, was described by Justice Blackmun in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 186, 105 S.Ct. 3108, 3116 (1985):

> "As the Court has made clear in several recent decisions, a claim that the application of government regulations effects a taking of a property interest is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue."

Petitioner herein must be excused from this exhaustion requirement, because the confluent effect of these governing statutes and ordinances is obvious. An application by petitioner for a change of use would be an exercise in futility, not to mention a potential economic disaster if repeated applications for use variances had to be made before petitioner is deemed to have exhausted its administrative remedies. While the Jackson Township Zoning Ordinance is extremely specific as to what use is permitted on Petitioner's property (Appendix K, pp. 109a-115a), there is no guidance available through either the zoning ordinance or the State Municipal Land Use Law as to the type of use for which a use variance might be granted. To require Petitioner to make repeated applications for an assortment of alternate uses, in the

hopes that a variance will be granted before Petitioner exhausts its financial resources, is absurd. It would be futile. Also, under the New Jersey Municipal Land Use Law, detailed engineering reports can be required and the applicant pays for the municipal engineer's review thereof. Each such variance attempt could cost tens of thousands of dollars.

The concept of futility in the context of land use applications was aptly and succinctly described in an article by Michael M. Berger, an experienced practitioner in the fields of land use and eminent domain law:

> "The word [futility] has a plain English meaning. Webster's defines it as 'serving no useful purpose' and 'completely ineffective.' (*Webster's New Collegiate Dictionary*, 468 [1974]). A leading land use text concludes that application to a regulatory body must be considered futile if any of the following circumstances applies: the agency has no power to grant relief; the agency lacks the power to grant relief which would permit the proposed project to be developed; the community is openly hostile to the property owner's proposal; the regulatory agency is openly hostile either toward the property owner, his proposal or the type of development proposed; or the regulation was adopted to preclude the type of development the owner wishes to make. (3 Rathkopf, The Law of Zoning and Planning §35.-02[2])." Michael M. Berger, *Ripeness Test for Land Use Cases Needs Reform*, 11 Zoning and Planning Law Report 57, 60 (1988).

The Court of Appeals for the Ninth Circuit applied this futility concept in *Herrington v. County of Sonoma*, 834 F.2d 1488 (9th Cir. 1987). The Herringtons owned 540 acres in Sonoma County, which they wanted to develop. The county adopted a new "General Plan", and a subdivision application was submitted. The county

arrived at the conclusion that this subdivision proposal was inconsistent with the plan and the application was denied. Herrington successfully sued Sonoma County in the federal district court, challenging the plan itself and its application to their subdivision proposal. On appeal, the circuit court acknowledged that although the general "ripeness" rule would require a property owner to make both a development application and a variance application before his claim would be considered ripe enough to litigate, to require Herrington to do so would have been futile because the county had already decided that the project was *inconsistent* with the new General Plan, and the applicable law prohibited the granting of variances to allow *inconsistent* developments. Thus, any further efforts would have been a waste. *Herrington,* 834 F.2d at 1496-1497.

The myriad of legal requirements imposed upon Petitioner by the applicable municipal and state governments put it in the same position as the landowner in *Herrington, supra,* as any variance application here would likewise be a futile effort. Among them are provisions of the New Jersey Mobile Home Owner's Rights Act, *N.J.S.A.* 46:8C-1, *et seq.*; the New Jersey statutes that govern proceedings between landlord and residential tenants, *N.J.S.A.* 2A:18-61.1, *et seq.*; the New Jersey Municipal Land Use Law, *N.J.S.A.* 40:55D-1, *et seq.*; Chapter 86 of the Jackson Township Ordinances, "Rent Control for Mobile Home Parks"; and Chapter 109 of the Jackson Township Ordinances, the "Zoning Code of the Township of Jackson", and particularly Ordinance 01-89 passed on February 27, 1989.

The Mobile Home Owner's Rights Act, and particularly *N.J.S.A.* 46:8C-3 (Appendix G, pp. 70a-71a), permits a mobile home park tenant to sell his or her mobile home on site, with the landlord being unable to refuse to accept a buyer as a tenant absent legitimate cause (i.e.,

bad credit). The Jackson Township rent control ordinance that governs mobile home parks (Appendix J., pp. 81a-108a) does not include a vacancy decontrol provision for on-site mobile home resales. Therefore, the outgoing tenant obtains the benefit of the below market rent, and can sell his or her mobile home at a premium that reflects this depressed rent level (i.e., in this case, the premium was $17,000.00). This is the uncompensated physical taking of Petitioner's property that has been complained of from the inception of the rent increase application that is the subject of this litigation. Of course, pursuant to this Court's decision in *Yee*, the effect upon Petitioner of these laws is not sufficient to prove a compensable physical taking, absent a government mandate that the mobile home park use continue indefinitely.

The Jackson Township Zoning Ordinance was amended on February 27, 1989 (Appendix K, 109a-115a), to provide that this mobile home park, as well as all other mobile home parks situate within the Township of Jackson, be zoned exclusively for that specific use. *N.J.S.A.* 40:55D-70(d), quoted in pertinent part at p. 5 above, describes the criteria which must be met in order for a property owner to obtain a variance to commit its property to a use other than that which is specifically permitted by the governing municipal zoning ordinance. The criteria for granting a use variance have been expounded upon at length in numerous reported decisions of the New Jersey Supreme Court and lower state courts. The case law clearly demonstrates that in order to receive a use variance from a board of adjustment, applicants must satisfy two criteria: 1) a showing of "special reasons", which may either be uses that promote the general welfare, or uses which if not approved, would impose exceptional or undue hardship on the applicant; and 2) the vari-

ance will not result in a substantial detriment to the public good or the zoning plan. *Burbridge v. Mine Hill Twp.*, 117 N.J. 376, 384-385, 568 A.2d 527, 532 (1990); *Medici v. BPR Co.*, 107 N.J. 1, 4, 526 A.2d 109, 110 (1987). Accordingly, such use variances to allow new nonconforming uses or expansion of existing ones are granted only sparingly and with great caution since they tend to impair sound zoning. *Kohl v. Mayor and Council of Bor. of Fair Lawn*, 50 N.J. 268, 276, 234 A.2d 385, 389 (1967). Thus, where a property owner such as the Petitioner herein is operating a 250 unit senior citizen mobile home park in a mobile home park zone, such a property owner cannot possibly show the required "special reasons." Further, it is absolutely against the *public good* to eliminate senior citizen housing in the State of New Jersey. *N.J.S.A.* 2A:18-61.23. Thus, entitlement to a use variance could not possibly be legally proven or sustained by the Petitioner.

Furthermore, a recent amendment to the Mobile Home Owner's Rights Act adds yet another insurmountable hurdle to be cleared by a property owner before a mobile home park can be closed, namely that a municipal agency such as the Jackson Township Board of Adjustment may not approve a variance application "which would result in the removal or relocation of mobile home owners residing in a mobile home park, without first determining that adequate mobile home parks or other suitable facilities exist for the relocation of those mobile home owners." *N.J.S.A.* 46:8C-21.[2] This, too, is impossible to do. For the past 20 years or more, mobile home spaces have been scarce throughout the State of New Jersey. In fact, their

[2]This statute became effective on April 17, 1992, after the Petitioner's appellate brief was submitted to the Appellate Division of the Superior Court of New Jersey.

scarcity was the impetus for the adoption of the original provisions of the Mobile Home Owner's Rights Act in 1973. The Honorable Peter F. Boggia, J.S.C., commented upon the problem sought to be addressed by this legislation in *Metpark, Inc. v. Kensharper,* 206 N.J. Super. 151, 154-155, 501 A.2d 1068, 1069 (Law Div. 1985):

> "A major legislative purpose in enacting . . . *N.J.S.A.* 46:8C-1, *et seq.*, was to curb abuses by mobile home park owners on tenants within such parks . . . . A major reason that the recourse of mobile home park tenants was so limited was that mobile home space is severely limited in New Jersey. Thus, a mobile home owner would have no place to put his home in the event his lease was terminated. Also, if the tenant were forced to sell his home separate from the leased premises, the value of his home would drop dramatically. In the mobile home market, a home without a place to be put is not worth nearly as much as a home attached to a leased parcel of land."[3]

In addition to the laws cited above, that restrict both the Petitioner's present use and any attempt to change that use in the future, Petitioner is also subject to the restrictions imposed by the state statutes governing eviction of residential tenants. (See Appendix H, pp. 72a-78a). Generally speaking, with few exceptions that are not relevant here,[4] a residential tenant cannot be evicted

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[3] This Court must note that the discrepancy in value referred to by Judge Boggia is not the incremental value transferred to the tenant as a result of no vacancy decontrol in a rent control ordinance. Rather, the mobile home is obviously unusable if there is no place to put it, and that accounts for the value discrepancy discussed here. The *Metpark* case dealt with a mobile home park that was *not* subject to rent control.

[4] These exceptions do not apply to mobile home park tenants.

from any type of housing unless the landlord can pigeonhole its cause of action within one of the statutorily permitted reasons for eviction. Among other permissible grounds, *N.J.S.A.* 2A:18-61.1(h) (Appendix H, at p. 74a) permits a mobile home park tenant to be evicted if the owner seeks to retire the property permanently from use as a mobile home park, in which event, *N.J.S.A.* 2A:18-61.2(d) (Appendix H, pp. 77a-78a) requires that the tenant be given a minimum of eighteen months written notice prior to eviction. (Presumably, this is the second component of the freedom of choice that a landlord has which, in *Yee v. City of Escondido, supra,* led the Court to conclude that there was no forced government intrusion, i.e., that the landlord had the right to close the mobile home park.)

In 1986, this statutory scheme was amended to impose additional and more exacting requirements upon a mobile home park owner who wishes to retire its property from that use. The legislature adopted *N.J.S.A.* 2A:18-61.1b (Appendix H, at pp. 76a-77a), which requires that the new use must be *nonresidential* in order to constitute grounds for eviction of the mobile home park's tenants, *and* if such a nonresidential use is not permitted by the applicable zoning ordinance, a property owner would have to first obtain all required permits and approvals before evicting any tenants. In addition, the notice which must be given to the tenants 18 months in advance of eviction must disclose the proposed nonresidential use to which the premises will be put.

Therefore, applying these statutory tenancy provisions to a use variance application by Petitioner herein, Petitioner would, of necessity, have to obtain a use variance from the Jackson Township Board of Adjustment before

it could give its tenants notice to vacate, because Petitioner would have no way of knowing in advance what proposed nonresidential use would be approved by the board before actually obtaining the use variance. The alternative would be to send the 18-month notice to the tenants in advance of applying for a use variance, have the Jackson Township Board of Adjustment deny the variance, and then have to start the notice procedure all over with a new proposed use on another variance application.

Further, if a variance is granted despite statutory guidelines to the contrary related to public policies implemented by zoning, and despite the state statute which prohibits variances where tenant relocation is not possible, the statutory 18-month notice in the original residential tenancy statutes gets protracted by five-year stays of eviction, or a forty-year stay if senior citizens are involved (and they are here), pursuant to other statutory tenancy provisions. *N.J.S.A.* 2A:18-61.6 through 61.12, *N.J.S.A.* 2A:18-61.23, *N.J.A.C.* 5:24-1.1, 1.2, 1.6, 1.7 and 1.8 (Appendix L, pp. 116a-126a, 128a-132a).

There is no closing of a mobile home park without evictions; no evictions without developmental approvals; no developmental approvals without a use variance; no use variance without the ability to relocate the tenants; and if all this happens, nothing changes for 40 years, because the majority of the Petitioner's tenants are senior citizens. No administrative proceeding is needed to further demonstrate to this Court that the resulting occupation of Petitioner's property by its mobile home tenants is permanent, and it is caused by government mandate in the form of the state statutes and municipal ordinances cited above.

In light of all of the foregoing, Petitioner respectfully submits that these statutes and ordinances, on their face, preclude even the most remote possibility that Petitioner's property can be committed to another use other than a mobile home park. Accordingly, a physical taking is proven, caused by the absence of vacancy decontrol of rents for on-site mobile home resales, in the Jackson Township mobile home park rent control ordinance.

WHY THIS WRIT SHOULD BE GRANTED

Special and important reasons exist for the granting of this Petition for Writ of Certiorari, as identified in Supreme Court Rule 10. As specifically enunciated in Supreme Court Rule 10(c), when a state court has decided an important question of federal law in a way that conflicts with applicable decisions of this Court, review on writ of certiorari is appropriate.

As set forth above in detail, the Appellate Division of the New Jersey Superior Court misapplied the exhaustion doctrine of *Williamson, supra,* and the physical taking criteria of *Yee, supra,* to the substantial financial detriment of Petitioner herein and all others in the State of New Jersey who are similarly situated. Such flagrant disregard for federal law cannot be tolerated.

Accordingly, Petitioner prays that this petition for review be granted, in order to protect Petitioner and similar mobile home park owners from having their constitutional rights extinguished by state courts who fail to follow federal court precedents on issues of federal law.

IN CONCLUSION

Petitioner respectfully requests that this Court grant their petition for review, or in the alternative, remand this matter to the New Jersey state courts, with instructions to follow and properly apply federal law when ruling on federal constitutional issues.

Respectfully submitted,

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July 26, 1993

APPENDIX A

[Filed Apr 29, 1993]

SUPREME COURT OF NEW JERSEY
C-773 September Term 1992

36,377

MOBILE HOME VILLAGE, INC.,

Plaintiff-Petitioner,

v.

MAYOR AND COUNCIL OF THE TOWNSHIP OF JACKSON, et al.,

Defendants-Respondents.

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-1757-91 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 27th day of April 1993.

/s/Stephen W. Townsend
Clerk Of the Supreme Court

APPENDIX B

[Not For Publication Without The
Approval Of The Committee On Opinions]

[Filed Jan 20 1993]

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1737-91T5

MOBILE HOME VILLAGE, INC.,
a Corporation of the State of New Jersey,
t/a SOUTH WIND VILLAGE,

Plaintiff-Appellant

v.

MAYOR AND COUNCIL OF THE TOWNSHIP
OF JACKSON, THE JACKSON TOWNSHIP
RENT CONTROL BOARD, and THE ESTATE
OF KURT H. AND SOPHIE BIELEFELOT,

Defendants-Respondents

Argued January 4, 1993 – Decided Jan. 20, 1993.

Before Judges Shebell and Conley.

On appeal from the Superior Court of New Jersey
Law Division, Ocean County.

Christopher J. Hanlon argued the cause for appellan
(Gross, Hanlon, Truss & Messer, attorneys; Mr. Han
lon, on the brief and reply brief).

Thomas G. Gannon argued the cause for respondents Mayor and Council of the Township of Jackson (Hiering, Hoffman & Gannon, attorneys; Mr. Gannon, on the brief).

Courtland T. Babcock, II, argued the cause for respondent Jackson Township Rent Control Board (Babcock, Hennes & Bielory, attorneys; Mr. Babcock, on the brief).

Respondent Estate of Kurt H. and Sophie Bielefelot did not file a brief.

PER CURIAM

Plaintiff, Mobile Home Village, Inc., owned a 250-unit mobile home park in Jackson Township, Ocean County, called South Wind Village. As such, plaintiff became subject to the provisions of the Jackson Township Rent Control Ordinance (the Ordinance). Kurt H. and Sophie Bielefelot owned a 1972 Forrest Park mobile home located on a rented spaced in South Wind Village. The last surviving owner died in or about 1989, and the owner's heirs sought to sell the mobile home that was located on the rented space.

On January 19, 1990, plaintiff filed an application for a rent increase because the tenancy relationship ended upon the death of the last surviving owner. As of that date, the controlled rent for the space was $190.31 per month. The Rent Control Board of Jackson Township (Board) conducted hearings on plaintiff's application on March 9 and April 3, 1990.

At the Board hearings, plaintiff presented the testimony of a real estate appraiser. He testified that the fair market rental value of the mobile home rental space in question was $325. The appraiser also testified that the

Bielefelot's mobile home was being offered for a sa price of $25,000. He opined that the value of the mobi home would be only $8,000 if plaintiff was permitted charge the fair market value rent for the space. Th Board denied the relief sought by plaintiff. The Board denial was appealed to the Mayor and Council of Jackso Township (Township) which also denied relief. Plainti filed a complaint in lieu of prerogative writs on May 1990, seeking compensation as the Ordinance effected taking of plaintiff's property.

On September 20, 1991, the matter was tried befo the Law Division on the bifurcated question of liabilit On October 30, 1991, Judge Rosalie B. Cooper ruled th the Ordinance did not effect a taking of plaintiff's pro erty in violation of the United States Constitution an 42 *U.S.C.* §1983. The judge denied plaintiff's reque for attorney fees under 42 *U.S.C.* §1988 and ordere that the plaintiff's challenge to the Board's action be di missed with prejudice. Plaintiff appeals from this jud ment. We affirm Judge Cooper's order.

During the pendency of its appeal, plaintiff filed motion for a stay on the basis that "the identical issu involved in this Fifth Amendment Takings claim again the absence of vacancy decontrol in the Jackson Tow ship Mobile Home Park Rent Control Ordinance involved in an appeal presently pending before the Unite States Supreme Court." On January 6, 1992, we denie this motion.

The Township and the Board moved to dismiss plai tiff's appeal after the case of *Yee v. City of Escondid* 503 U.S. ___ , 112 *S.Ct.* 1522, 118 *L.Ed.*2d 153 (1992 was decided contrary to the position asserted by plaintif The plaintiff cross-moved to supplement the record

remand. After both motions were denied, the Township and the Board moved to permit the filing of a brief. Their motions were granted on July 2, 1992.

Plaintiff's primary contention in this appeal is that:

> [T]he combined effect of taking away the landlord's rights to determine who will be in possession of the land, together with the artificial premium that the tenant who happens to be in possession may now obtain as a result of the fact that rents are artificially maintained at a below market level in the resale, represents a physical taking accomplished by operation of both the State Statute and Rent Control Ordinance.

N.J.S.A. 46:8C-3a provides:

> No mobile home park shall deny any resident of such mobile home park the right to sell said resident's mobile home within the park or require the resident to remove the mobile home from the park solely on the basis of the sale thereof. The park may reserve the right to approve the purchaser of said mobile home as a tenant, but such permission may not be unreasonably withheld and the park shall not exact a commission or fee with respect to the price realized by the seller unless the park owner or operator has acted as agent for the mobile home owner in the sale pursuant to a written contract.

N.J.S.A. 2A:18-61.1 states that a landlord may not evict a tenant except for good cause. The statute sets forth those circumstances which may give rise to a "good cause" eviction. The pertinent good cause exception provides:

> h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile park . . . . [*N.J.S.A.* 2A:18-61.1h].

If an owner does wish to terminate use of the property a mobile home park, the owner must give notice eightee months in advance, or if a lease is in effect, no actio may be instituted before the lease expires. *N.J.S.A* 2A:18-61.2d. In addition, the landowner must compl with certain requirements before eviction is permitted.

> If an owner seeks an eviction alleging permanent retirement of the premises from residential use pursuant to subsection h. of . . . and if, pursuant to land use law, nonresidential use of the premises is not permitted as a principal permitted use or is limited to accessory, conditional or public use, a rebuttable presumption is created that the premises are not and will not be permanently retired from residential use. . . . No tenant shall be evicted pursuant to subsection h . . . if any State or local permit or approval required by law for the nonresidential use is not obtained . . . . [*N.J.S.A.* 2A:18-61.1b].

Plaintiff, in its initial brief on appeal, relied on tw federal circuit court of appeals holdings. The first, *Ha v. City of Santa Barbara,* 833 *F.*2d 1270 (9th Cir. 1987) *cert. denied,* 485 *U.S.* 940, 108 *S.Ct.* 1120, 99 *L.Ed.*2 281 (1988), involved an ordinance which required mobil home park owners to offer leases of unlimited duratio to tenants. *Id.* at 1273. Landlords could only terminat a lease for good cause, which was narrowly defined. *Ibid* Plaintiff argued that a physical taking of its propert occurred by giving tenants a perpetual lease in addition t a below-market rental rate. *Id.* at 1274.

The court of appeals in *Hall* was reviewing the distric court's grant of defendant's motion to dismiss. *Ibid.* Th court found that plaintiff could prove a *physical* takin of its property. *Id.* at 1276. It held that the ordinanc under review

> changes the fundamental relationship between the parties, giving landlord and tenant complementary estates in the same land. On the one hand, the landlord loses forever a fundamental aspect of fee simple ownership: the right to control who will occupy his property and on what terms. On the other hand, the tenant gets an interest that he can liquidate and take with him when he leaves the property . . . . [*Id.* at 1279].

The second case cited in support of plaintiff's position was *Pinewood Estates of Michigan v. Barnegat Tp. Leveling Bd.*, 898 *F.*2d 347 (3d Cir. 1990), in which plaintiffs asserted the identical argument as in *Hall* with reference to New Jersey statutes and a township ordinance. The ordinance set forth a formula that landlords were to use in establishing rents but did not have a vacancy decontrol provision allowing a mobile home park owner to negotiate a new rent when a tenant moved or a tenancy ended. *Id.* at 349. One statute provided that landlords could not require tenants to remove their mobile homes from the lot when the home was sold. In addition, landlords could reserve the right to approve purchasers of mobile homes, but could not withhold approval unreasonably. *N.J.S.A.* 46:8C-3a. A second statute declared that landlords could only evict tenants for statutorily defined good cause. *N.J.S.A.* 2A:18-61.1.

Similar to *Hall*, the court in *Pinewood* was considering this matter on appeal from a motion to dismiss. The court stated: "Inasmuch as this matter is before us on an appeal from an order granting a motion to dismiss, we assume that all the factual allegations in the complaint could be proven." *Pinewood, supra*, 898 *F.*2d at 350. In determining that a physical taking may have occurred, the court stated:

> Here, there has been a permanent transfer of the appellants' possessory interests to each tenant to occupy a rent controlled pad. Thus, although the interest belongs to the appellants, the landlords, the effect of the law is to transfer the interest, without compensation, from the landlords to the tenants. Accordingly, a tenant may, by determining the purchaser of his mobile home, select the new tenant for the park and command a premium for the alienation of the right to occupy the pad at a controlled rent to the complete exclusion of the appellants. The combined impact of the statute and the ordinance operates to deprive the appellants of their possessory interest in the pad permanently. [*Id.* at 353].

Although these cases supported plaintiff's position, the United States's Supreme Court in *Yee, supra,* 503 U.S. ___ , 112 *S.Ct.* 1522, 118 *L.Ed.*2d 153, handed down while this appeal was pending, undermined the holdings in those cases. *See Richardson v. City and County of Honolulu,* 802 *F. Supp.* 326, 332 (D. Hawaii 1992). At issue in *Yee* was the combined effect of the California Mobilehome Residency Law and Escondido's municipal rent control ordinance. The California statute provided that a park owner could only terminate a tenancy for the nonpayment of rent, a violation of law or park rules, or the owner's desire to change the use of his land. *Yee, supra,* 530 *U.S.* at ___ , 112 *S.Ct.* at ___ , 118 *L.Ed.*2d at 163 (citing *Cal. Civ. Code Ann.* §798.56 (West 1982 and Supp. 1991)). In addition, the park owner was unable in ordinary circumstances to require the removal of a mobile home when it was sold and could not unreasonably withhold approval of the purchaser of a mobile home. *Ibid.* (citing *Cal. Civ. Code Ann.* §798.73, .74).

The ordinance provided for rent control of rental space in mobile home parks. Rents were set at 1986 levels and

could not be increased unless the owner received permission from the city council. The council had to approve any increase in rent it determined to be "just, fair and reasonable." *Ibid.* The ordinance enumerated eleven factors the council was to consider in determining whether the increase was warranted. *Ibid.*

Petitioners owned two mobile home parks in the City of Escondido. The complaint alleged that:

> The rent control law has had the effect of depriving the plaintiffs of all use and occupancy of [their] real property and granting to the tenants of mobilehomes presently in The Park, as well as the successors in interest of such tenants, the right to physically permanently occupy and use the real property of Plaintiff. [530 *U.S.* at ___ , 112 *S.Ct.* at ___ , 118 *L.Ed.*2d at 164].

The petitioners relied primarily on the *Hall* case in bringing their claim. However, even in light of that decision, the California courts granted the defendant's demurrer. *Ibid.* The United States Supreme Court granted certiorari "to resolve the conflict between the decision below and those of two of the federal Courts of Appeals," *Hall* and *Pinewood*. *Ibid.*

In determining whether a physical taking occurred, the Supreme Court noted that a physical taking, as opposed to a regulatory taking, exists only where the government "*requires* the landowner to submit to the physical occupation of his land." 530 *U.S.* at ___ , 112 *S.Ct.* at ___ , 118 *L.Ed.*2d at 165. After examining the ordinance in conjunction with the statute, the Court found that no physical taking had occurred. The Court stated:

> Petitioners voluntarily rented their land to mobile home owners. At least on the face of the regulatory

> scheme, neither the City nor the State compels petitioners, once they have rented their property to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with six or twelve months notice. *Cal. Civ. Code Ann.* §798.56(g). Put bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced upon them by the government. [*Ibid.*].

The Court noted that it has consistently allowed states to regulate housing conditions, particularly landlord-tenant relationships, without requiring payment of compensation for resulting economic consequences. 530 *U.S.* at ___, 112 *S.Ct.* at ___, 118 *L.Ed.*2d at 166. Although the petitioners argued that the ordinance transferred wealth only to the "incumbent mobile home owner," the Court held that this had no bearing on a physical takings issue because the ordinance "does not require petitioners to submit to the physical occupation of their land." 530 *U.S.* at ___, 112 *S.Ct.* at ___, 118 *L.Ed.*2d at 167.

The Supreme Court adequately answered the plaintiff's main argument in the present case as follows:

> Petitioners emphasize that the ordinance transfers wealth from park owners to incumbent mobile home owners. Other forms of land use regulation, however, can also be said to transfer wealth from the one who is regulated to another. Ordinary rent control often transfers wealth from landlords to tenants by reducing the landlords' income and the tenants' monthly payments, although it does not cause a one-time transfer of value as occurs with mobile homes. Traditional zoning regulations can transfer

> wealth from those whose activities are prohibited to their neighbors; when a property owner is barred from mining coal on his land, for example, the value of his property may decline but the value of his neighbor's property may rise. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more *visible* than in the ordinary case, see Epstein, Rent Control and the Theory of Efficient Regulation, 54 Brooklyn L. Rev. 741, 758-759 (1988), but the existence of the transfer in itself does not convert regulation into physical invasion. [530 *U.S.* at ___, 112 *S.Ct.* at ___, 118 *L.Ed.*2d at 166].

Thus, the holdings in *Hall* and *Pinewood* are no longer persuasive in light of the Supreme Court's determination that no physical taking occurs in these circumstances. *Yee* effectively disposed of plaintiff's argument as asserted in its initial brief.

Plaintiff, nonetheless, argues in its reply brief that "the concept of a 'taking' claim can encompass numerous issues, and certainly there is a 'taking' argument which survives after the Supreme Court's decision in *Yee*." Plaintiff reasons that because the ordinance and the statutes here effectively require the landlord to continue the use of its property as a mobile home park, *Yee* is not dispositive. Plaintiff urges:

> New Jersey's tenancy scheme prohibits eviction unless the landlord can obtain all zoning approvals for an alternate commercial use. Once the mobile home park is zoned for mobile home park use only, as here, then the landlord cannot get the alternate commercial use development approvals, and therefore, cannot close his mobile home park. Under those circumstances, the zoning ordinance is the instrument which coerces the landlord to continue

use of his land by the third parties in question. That creates the missing piece of a puzzle which was fatal to the landlord's claim in *Yee*. That missing piece being extant here, this Court must conclude that a taking has occurred as a result of the municipal regulations and/or remand for consideration of the zoning ordinance and its impact on the landlord's rights to possession of his own land.

Petitioners in *Yee* also asserted that the existing California statutes were a "kind of gauntlet" which effectively precluded them from changing the use of their land. 530 *U.S.* at ___ , 112 *S.Ct.* at ___ , 118 *L.Ed.*2d at 165. The Supreme Court refused to consider this aspect of petitioners' argument because they did not attempt to change the use of their land. *Ibid.* The Court only examined the face of the statute, but noted that:

> A different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy. [530 *U.S.* at ___ , 112 *S.Ct.* at ___ , 118 *L.Ed.*2d at 166].

The Supreme Court in *Yee* noted at the beginning of its opinion:

> [W]here the government merely regulates the use of property, compensation is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owners of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. *See, e.g., Penn Central Transp. Co. v. New York City,* 438 *U.S.* 104, 123-125, 57 *L.Ed.*2d 631, 98 *S.Ct.* 2646 (1978). . . . [This] necessarily entails complex factual assessments of the purposes and economic effects of government actions. [530 *U.S.* at ___ , 112 *S.Ct.* at ___ , 118 *L.Ed.*2d at 162].

We decline to consider the merits of plaintiff's argument. Plaintiff has not demonstrated any attempt to change the use of its land. *See N.J.S.A.* 40:55D-70d. We conclude that it would be wholly speculative to determine whether the untested circumstances require plaintiff to perpetually use its property as a mobile home park. Even though plaintiff might have difficulty changing the use of its property, the statutes and ordinance do not on their face preclude plaintiff from discontinuing use of the land as a mobile home park.

Plaintiff further claims that no rational nexus exists between the stated rent control goals of the Ordinance and the means used to achieve these goals; thus, a due process violation resulted. However, no due process analysis exists in the record. The hearings conducted before the Board only focused on the vacancy decontrol provision. Therefore, although we perceive that a rational nexus clearly exists, we will not decide this due process issue in light of the fact that no record has been created. *Murin v. Frapaul Constr. Co.*, 240 *N.J. Super.* 600, 613 (App. Div. 1990); *Matter of Kovalsky*, 195 *N.J. Super.* 91, 99 (App. Div. 1984).

Plaintiff's assertion that it is entitled to an award of attorney fees under 42 *U.S.C.* §1988 because defendants have violated its civil rights through a physical taking of its property without just compensation is not viable as plaintiff has failed to prevail in this action. *Cf. Gregg v. Township Committee of the Tp. of Hazlet*, 232 *N.J. Super.* 34 (App. Div. 1989).

Affirmed.

APPENDIX C

[Filed Oct 30 1991]

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Mayor and Council of the Township
of Jackson

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – OCEAN COUNTY

DOCKET NO. L-002407-90-PW

MOBILE HOME VILLAGE, INC.,
a Corporation of the State of New Jersey
t/a South Wind Village

Plaintiffs,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP
OF JACKSON, THE JACKSON TOWNSHIP
RENT CONTROL BOARD and THE ESTATE
OF KURT H. and SOPHIE BIELEFELOT,

Defendants.

CIVIL ACTION
ORDER FOR JUDGMENT

This matter having come on for Trial on September 20, 1991 and Christopher Hanlon, Esq. appearing on

behalf of the Plaintiff, Mobile Home Village, Inc., Courtland T. Babcock, II, Esq. appearing on behalf of the Defendant, Jackson Township Rent Control Board and Thomas G. Gannon, Esq. appearing on behalf of the Defendant, Mayor and Council of the Township of Jackson; and the Court having reviewed the pleadings and briefs submitted on behalf of the parties and having heard oral argument by counsel at Trial and for the reasons set forth on the record;

It is on this 30th day of October, 1991;

ORDERED AND ADJUDGED that the fact that the Jackson Township Rent Control Ordinance does not permit elimination of restrictions on rent increases when a tenant sells his or her mobile home does not effect a taking of plaintiff's property in violation of the United States Constitution and 42 *U.S.C.* Section 1983, *et seq.*; and it is further

ORDERED AND ADJUDGED that the plaintiff's claim under 42 *U.S.C.* Section 1983 *et seq.* for attorney's fees and damages is dismissed with prejudice; and it is further

ORDERED AND ADJUDGED that the plaintiff's challenge of the Jackson Township Rent Control Board action is hereby dismissed with prejudice; and it is further

ORDERED AND ADJUDGED that a copy of this judgment shall be forwarded to all parties within 7 days of the execution hereof.

/s/ Rosalie B. Cooper, J.S.C.
Rosalie B. Cooper, J.S.C.

APPENDIX D

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, OCEAN COUNTY
DOCKET NO: OCN-L-2407-90 P.W.

MOBILE HOME VILLAGE, INC.

Plaintiff,

vs.

MAYOR & COUNSEL OF
JACKSON TOWNSHIP, ET AL

Defendant.

TRANSCRIPT OF RECORDED
PROCEEDINGS OF:

– TRIAL –

Place: OCEAN COUNTY COURTHOUSE
TOMS RIVER, NEW JERSEY 08754

Date: September 20, 1991

BEFORE:
HON. ROSALIE B. COOPER, J.S.C.

TRANSCRIPT ORDERED BY:
CHRISTOPHER J. HANLON, ESQUIRE (Gross & Hanlon)

APPEARANCES:

CHRISTOPHER J. HANLON, ESQ., Attorney for the Plaintiff

THOMAS GANNON, ESQ., Attorney for the Defendant

COURTLAND T. BABCOCK, II, ESQ., Attorney for Rent Control Board

* * * * *

CHARLOTTE BARONE
364 COLONIAL ROAD
TOMS RIVER, NEW JERSEY 08753

* * *

[24] THE COURT: Thank you.

I think this Court has probably taken a different from all of you, if that's possible in this case. It's certainly an interesting case to deal with and having read all the cases that were submitted by counsel, certainly the unique form of education to this Court. Although I will tell you that I was previously involved in the Mays versus Jackson Township matter. I don't know if it was the one that went to the Supreme Court, but it was one of them.

The plaintiff is the owner of a mobile park home in Jackson Township. The plaintiff is subject to Township rent control ordinance for mobile parks. The ordinance enacted 7/10/73 and amended 8/4/80 states, I quote. "The owner of a newly constructed mobile home rental

space, or of a mobile home rental space being rented for the first time, or being – or being rented as a result of the vacating of the mobile rental space by that tenant of his mobile home, shall not be restricted in the rent that he charges. Any subsequent rental increases to the tenant who takes possession, however, shall [25] be subject to the provisions of this chapter. Where there is a resale of the mobile home remaining in the same rental space, the provisions of this chapter restricting rental increases shall continue to apply." End quote. And that's Section 86-18 of the Jackson Township Rent Leveling Ordinance as set forth in plaintiff's Exhibit B.

Plaintiff has applied for an exception from the ordinance on the basis of the fact that one of the mobile home owners had died and left the mobile home to his daughters. The daughters wish to sell the home. At this point in time, I think the home has, in fact, been sold. I leave that subject to counsel but that's my understanding of the case. Which really does not change my opinions in any way. However, that's my understanding of the factual scenario.

The purchaser of the mobile home according to Section 86-18 of the ordinance would thereby automatically enjoy the benefit of the controlled rent of the decedent. It's the plaintiff's position that this ordinance in conjunction with the State's statutes governing the sale of mobile homes, transfers a property right from the landlord to the vacating tenant allowing the tenant a premium on the value of the mobile home since it is situated on a rent control pad.

Therefore, the plaintiff argues that the transfer of the right constitutes an unconstitutional taking without just compensation under the Fifth and Fourteenth Amendments of the [26] United States Constitution.

Plaintiff relies largely on two Federal Circuit Court cases, Pine Woods Estates of Michigan versus Barnegat Township Leveling Board 89F Second 347 (Third Circuit 1990) and Hall versus the City of Santa Barbara 833F Section 1270 (Ninth Circuit 1986). Certification denied 485 U.S. 940 1988.

Plaintiff argues a physical taking of it's property by the ordinances a failure to provide a vacancy decontrol provision which would allow the plaintiff to increase the rent charged for that restriction.

At the Hearing, the Board sitting heard the testimony of plaintiff's expert and the argument of plaintiff's counsel. In essence the expert testified that the value of the mobile home being situation on a rent control pad was increased from the fair market value of $8,000 to $25,-000. He also indicated that a fair rental rate increase would be from $190 and that it might have been $192. But what I read was $190 being paid by the decedent to $325 based upon rentals in new mobile home parks in the area.

The Board denied plaintiff's application based on the fact that it was bound by the terms of the ordinance which did not permit such an increase.

Plaintiff has appealed to this Court – Court on the basis that the lack of vacancy decontrol provision and the ordinance conjoined with State statute NJS2A:18-61.1, that said, which statute was described by Governor Cahill as follows. Quote "This bill described, as, quote within a quote, "mobile home owners bill of rights" end of the quote within a quote. The Governor said, affords protection to the mobile home owner in that he will be able to sell his home without first having to remove it from the park where it is situated.

It also spells out of the reasons for which a park owner or operator may evict a mobile home dweller. The Court adds parenthetically that does not include the sale or transfer of the mobile home. And NJSA46:8-2 had said, and a physical taking of the property – just a moment. Those are the two statutes to which I am referring to get back to the beginning of the sentence so that I don't confuse everybody including myself.

If that plaintiff has appealed to this Court on the basis that the lack of a vacancy controlled provision in the ordinance can join with the State statutes which I just referred to combined in a physical taking of the property and therefore the ordinance being unconstitutional – let's see if I can read my interjected writing. The landlord should be permitted to garner the fair market rent of the pad which the expert of Pine would be $325 per month.

At the outset I must say that I have read with great interest Judge Fundler's air you died opinion (sic) which was [28] forwarded to me by counsel for plaintiff that is Highlander Association Limited versus Borough of Highlands, and for that I thank you sir.

This opinion was based a large part upon two cases. Hall and Pine Wood referred to previously. Neither of those cases nor the opinion of Judge Fundler is binding on this Court. But can be – but can be considered under the – under the principles of comity and more so, this Court can certainly consider and all counsel agree on the underlying concerns and opinion set forth in those cases which are factually compatible to that in issue today.

It's extremely important to know that the Hall case was based a large part on the United States Supreme Court decision in Loretto versus Teleprompt of Manhattan, CATV Corp. 458 US 419 1982 in which the actions

of the government were determined to be a physical taking when the land owner was required to permit cable attachments to it's property as opposed to the United States Supreme Court case of FCC versus Florida Power Corp. 480 US 245, 1986 case. For the Court held that there was no pre se or physical taking since they interpreted the statute as not requiring the utility company to enter an agreement to lease poles. But if there was acquiescence, then the amount of dollars was subject to regulation. Acquiescence being the key to it's decision.

After reading all of the applicable cases and the [29] arguments of counsel, it's obvious that this Court must deal with the difference between physical, that is, per se, taking as opposed to regulatory obligations or control. There is no – no vacancy decontrol provision existing in the Jackson Rental Control Ordinance. To the contrary, the Ordinance 86-18 provides in effect, that no rent crease – rent increases is appropriate unless it falls within the parameters of the usual rental ordinance. That a landlord should realize a fair and just return on his investment. Has been the law since Hutton Park Towers Garden versus Town Counsel 68 New Jersey 543 a 1975 case and it's progeny. Has been recognized as the basis for permitting rent control laws which have been constitutionally recognized as valid regulatory schemes. The State statutes are extremely important in dealing with the issues involved in this case.

For example, 2A:18-61.1 permits eviction for reasons for other than vacancy and regulates the permitted relinquishment of mobile park home – mobile home park from residential to commercial use. In addition, as to 46:8Z NJSA 46:8Z-3, therein stated the park may reserve the right to approve the purchaser of said mobile home as a tenant. But such permission may not be

unreasonably withheld and the park shall not exact a commission or fee which respect to the price realized by the seller unless the park owner or operator has acted as agent for the mobile home owner in the sale pursuant [30] to a written contract.

This legislative declaration is in this Court's opinion extremely important. These statutes above referred to must be considerate – considered in determining this matter. As a practical matter it should be recognized that most mobile homes are usually not removed from their pads since the value significantly decreases by such removal.

It's interesting to note that the Court in the Pine Wood case acknowledged that the issues before that – this Court is a difficult problem, that is regulatory versus physical taking. And I quote, Question of what constitutes a taking has proved to be a problem of considerable difficulty citing cases. The Supreme Court has recognized two categories of takings, regulatory and physical. A critical distinction that the Court has taken significantly different analytical approaches in determine what – in determining what constitutes a regulatory as compared with a physical taking and that cite – the quote is from 898F Second F350. The Judge continues stating, quote, "On the other hand physical takings involved occupation of property and as distinguished from cases involving claims of regulatory taking when the Supreme Court has found that there has been a permanent physical occupation of private property, it has invariably found a taking. In such cases the character of the governmental action rather than the economic impact on the owner determines [31] whether there has been a taking requiring compensation.

Thus, and I'm still quoting, the Supreme Court has recognized that while a regulatory limitation on the right to use and receive profits from property will not necessarily or even usually establish that there has been a taking. Permanent physical occupation will without regard to whether the action achieves an important public benefit or only has minimal economic impact on the owner citing the Loretto case which we had discussed – was discussed by both counsel.

In the later regard, the Court would cite to the attention of the parties the recent case of Garner versus New Jersey Pine Lands Commission citation was decided July 23, 1991. The Citation is 125 New Jersey 193. Which indicates the great economic impact on the owners of Pine Land Park property that can be the outcome of regulatory statutes. It should be noted than the Pine Wood case the Court reversed remanded for trial as did the Court in Hall versus Santa Barbara.

The Pine Wood case expanded upon Hall's finding by stating, quote "Furthermore, under our analysis, the Barnegat ordinance in concert with State law has effectively transferred to designate a new tenant and to collect part of the rent from him to the old tenant rather than leaving it with the appellants, the landlord. The ordinance does not even purport to provide for compensation for that taking from [32] the appellants. Thus the appellants do not suggest that the Barnegat ordinance takes into account the market condition – that market conditions will create premium for mobile home on existing pads that provides for compensation, the park owners for the value of the premium.

The plaintiff claims that there's not an issue raised in this case of just and reasonable compensation for rent. But argues that this Court should go beyond that and

consider if there is sufficient State interest to justify the transfer of the right to charge more rent from the landlord to the new incoming tenant through the egress of the tenant receiving a premium on the sale of the mobile home.

Who again emphases the fact that in the Hall case the basis of the Pine Wood case, they failed to consider, as far as this Court is concerned the Loretto case. Which this Could finds was a physical occupation without considering the ramifications of the FCC case which I have described before. The difference this Court finds is an acquiescence. There was nothing that required the plaintiff at bar to rent his property from mobile home and thereby becomes subject to the State statutes and the Municipal ordinance governing such rental.

If one does so, he or she is thereby agreeing to be subject to such laws and ordinances. This Court expresses it's disagreement with the reasoning in determining – [33] determination of the third circuit in Pine Wood and relies instead upon a concept as set forth in the case of Thompson versus Malino Enterprises which has some factual distinction that which – upon which the appeal was dismissed for lack of federal questions. And I know parenthetically that it was argued that this could be considered controlling since it's a United States Supreme Court case. And in that case the Thompson case, would be standing for the principle of acquiescence.

It's important to recognize that the Jackson Township Rent Control ordinance in Mays versus Jackson was upheld as constitutional on the basis that the ordinance allowed a fair and just return on a capitol investment by the mobile park owner.

It's the opinion of this Court that the issues here presented can not be decided in a vacuum. The whole

scheme of rent control for mobile homes must be considered. The legislature in its's wisdom or lack thereof, depending upon your predilection has made a decision through statute that the landlord should not profit in any way from the premium derived from the fact that the mobile home is situated on a rent controlled pad.

The mobile home rent control statutes are based on the fact that a park owner should receive a fair and just return on his or her investment. The Rent Control Board without [34] appeal has decided that $190 per month constituted such a just and reasonable return on plaintiff's investment visavis the mobile home in question.

Consider the fact scenario proposed by plaintiff in which one, two, three or a dozen people sold their mobile home thereby allowing the landlord a raise from the just reasonable rent return to an amount far in excess that which is just and reasonable under the circumstances.

The fault, if any, arises not from the rent ordinance – rent control ordinance alone, but from the State's statute which disallowed the owner from partaking in the premium which it alleged the tenant received from the mobile home being on a rent control pad. This is a legislative and not a judicial determination and until declared unconstitutional, as far as this Court is concerned, is the law of the State of New Jersey.

In that regard, I cite the case which was cited by counsel on comity, that is Sierra Lake Reserve versus City of Rockland et al., which the Ninth Circuit, California case. It was the Ninth Civil – I don't know if that's Circuit. I think it's Ninth Circuit, is that correct? Ninth Circuit case in California decided July 9, 1991. Where the issue involved with a fair return on a capital improvement. That I think was a Boiler, but it was a capital improvement to the property.

This Court applying with regard to the vacancy of that [35] Court in California, applying with regard to the vacancy decontrol and due process provisions, that to prevail the park owner must demonstrate no rational relationship existing between the ordinance and it's purpose. And I quote, "Although it may be true that the ordinance in some cases takes money from the landlord and puts it into the pocket of the tenant who no longer resides at the park, the City Council could reasonably believe — could reasonably believe that in the majority of cases, the ordinance serves the valid public purpose of keeping mobbile home (from becoming prohibitively high, cease e.g. Canal versus the City of San Jose 485 US 1 at 13 and 108 Escort 849 and 858 and 99 Lawyer's Edition Second 1, 1988 case.

How well", and this is part of the quote, "How well the ordinance serves this purpose is a legislative question. One, the Court will not consider." In the context of the entire case and through the cases adjudicating vacancy decontrolled provisions, this Court finds that the ordinance which this Court classifies as regulatory, under consideration, is constitutional. That is as conjoined with the State statute.

Therefore, the other arguments of both plaintiff and defendant, not being necessary to this determination or having been considered by this Court will not be adjudicated at this time.

I thank you gentlemen for your briefs and I would ask [36] that Mr. Gannon submit an order on five days notice to all counsel.

MR. HANLON: Thank you your Honor.

THE COURT: Thank you sir.

MR. BABCOCK: Thank you your Honor.

MR. GANNON: Thank you.
(Whereupon, the matter concluded.)

* * * * *

I, the assigned transcriber, do hereby certify that the foregoing transcript of proceedings in the Ocean County Law Division on September 20, 1991, Docket Number OCN-L-2407-90 P.W., Tape Number RBC-137-91, is a true and accurate record of the proceedings.

Date: December 23, 1991 /s/ Charlotte Barone
Charlotte Barone, AOC #229

APPENDIX E

APPLICATION UNDER MOBILE HOME PARK RENT CONTROL ORDINANCE

Name of Applicant: South Wind Village

Address of Applicant: 125 Wyckoff Road, Eatontown, N.J. 07724

Tenant or Representative of Applicant:
Name: Samuel A. Landy, Esq.
Address: 125 Wyckoff Road, Englishtown, N.J. 07724
Tel. No.: 201-542-4555

THIS IS AN APPLICATION FOR THE FOLLOWING:

___ A. Annual rent increase under Section 86-4.

___ B. Rent increase for financial requirements under Section 86-5.

___ C. Rental increase for major capital improvements for services under Section 86-6.

___ D. Application for Tax Surcharge Approval under Section 86-9.

___ E. Application for mandated expense surcharge under Section 86-9.1.

___ F. Application for decrease in taxes or fees under Section 86-10.

___ G. Application for decreases due to habitability violation under Section 86-11.

___ H. Application for decrease due to tax appeal under Section 86-12.

XXX I. Exceptions - Under Section 86-18.**

___ J. Other action requested.

**The lease entered into between the landlord and tenants provided at paragraph #3: "The tenancy relationship between the present approved resident of the mobile home space and the landlord shall terminate upon the death of the last remaining of any approved tenants presently residing with the leased mobile home space". In that this has occurred, the applicant has the right to increase the rent under Section 86-18 as interpreted by the *United States Court of Appeals for the Ninth Circuit City Hall v. The City of Santa Barbara,* Case No.: 85-5838, decided August 22, 1986. Additionally, the Tenant has failed to pay rent. Landlord could evict the Tenant based on non-payment of rent and thus, be entitled to increase the rent on a vacancy decontrolled space. Landlord would like to avoid putting the children of the deceased through such a hardship.

XXX Annexed hereto is a true copy of any notices required under Chapter 86 of the Jackson Code.

___ Annexed hereto are any statements or other documents required under Rules, Regulations and Procedures of the Rent Leveling Board.

The following questions must also be answered by any park owner or representative of any such owner/applicant.

1. Was the property which is the subject of this application vacant land prior to the date of this application?

   No.

   (a) If your answer is in the affirmative, attach a copy of the tax bill as to such vacant property.

2. For each site set forth the immediate past year's approved base rent set by the Board.
   (a) Attach a copy of the Board Resolution
   Resolution attached.

3. All lease agreements entered into during the 12 months proceeding this application.
   None

4. Attach copies of all disclosure statements under Section 86-18B.
   None

5. Name and address of any tenant who removed a trailer from the park during the 12 months preceeding this application.
   N/A

If applicant is a Corporation, state name of registered agent:

Eugene W. Landy

Address of Registered Agent:

125 Wyckoff Road
Eatontown, N.J. 07724

**Annex hereto a listing of tenants to be effected by this application. If all tenants are to be effected, please list the tenant not to be included and the reason for the exclusion.

**No current tenants are to be effected by this application. The tenants are deceased.

Specify date as of which proposed rental or other increase/decrease is requested to be effective:

On the date of death of Sophie Bielefelot, which by information and belief was in December of 1989, making the rent increase effective January of 1990.

State whether applicant wishes an informal conference pursuant to Board rule 16, and if so, for what purpose:

Yes. It is applicants position that based upon the lease entered into between the applicant and tenants, the applicant is entitled to vacancy Decontrol when a tenant has died

Does applicant understand and agree that by signing the within application that he hereby agrees to conform to the Ordinances, Rules and Regulations of this Board, with regard to Rent Control:

/s/ Samuel Landy
Applicant

Dated: 1/19/90

By: Samuel A. Landy, Esq.
Title: Attorney for Plaintiff

RESOLUTION

SOUTHWIND VILLAGE
UNITED MOBILE HOME PARK
(89-)

BE IT RESOLVED BY THE MOBILE HOME PARK RENT LEVELING BOARD OF THE TOWNSHIP OF JACKSON that:

WHEREAS, the United Mobile Home Park t/a Southwind Village has made application for an increase pursuant to the provisions of Section 86-4 of the Ordinance.

WHEREAS, United Mobile Home Park t/a Southwind Village has duly filed an application with the Rent Leveling Board which sets forth its computation and seeks an

increase based on a precentage increase and the Consumer Price Index, CPI, and

WHEREAS, the Board has examined the application submitted by the applicant at its meeting of November 6, 1989 and has further considered the recommendations of the Board accountant, the Board now makes the following factual and legal findings and conclusions:

NOW, THEREFORE, the following specific findings of fact:

That, the Board finds the various computations submitted by the applicant for the individual lots has been reviewed by the Board Accountant and by the Board, and

That, the applicant, United Mobile Home Park t/a Southwind Village is entitled to an annual increase in accordance with Section 86-4 of the Ordinance for a percentage increase based upon the Consumer Price Index; and

That, the proper Consumer Price Index multiplier is to be 5.0%, and

That, the applicant is, therefore, entitled to an annual CPI increase as per the attached Schedule, and

That, this increase shall be effective as of November 1, 1989, and

That the Secretary of the Jackson Township Mobile Home Park Rent Leveling Board is hereby directed to deliver written, certified copies of this Resolution to the applicant/landlord and any tenant who requests same.

NOW, THEREFORE, BE IT FURTHER RESOLVED BY THE JACKSON TOWNSHIP MOBILE HOME PARK RENT LEVELING BOARD that it is the opinion that the record made at the hearing referred to above reasonably

supports the decision of the Jackson Township Mobile Home Park Rent Leveling Board as contained within this Resolution.

I CERTIFY THAT THE ABOVE IS A TRUE COPY OF A RESOLUTION DULY ADOPTED BY THE JACKSON TOWNSHIP MOBILE HOME PARK RENT LEVELING BOARD AT A DULY AUTHORIZED MEETING OF THAT BODY HELD ON THE 4th DAY OF December, 1989.

/s/ Kathleen Sevcenko
Kathleen Sevcenko, Secretary
Jackson Township Rent Leveling Board

SCHEDULE OF EXISTING RENTS AND PROPOSED NEW RENTS

SOUTH WIND MOBILE HOME VILLAGE

Schedule of Existing Rents Effective October 1, 1989		*Proposed New Rent Schedule* Effective November 1, 1989	
Base Rent	$161.94	Base Rent	$170.04
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License fee	.25
Total	$182.20	Total	$190.30
Base Rent	$166.75	Base Rent	$175.09
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License Fee	.25
Total	$187.01	Total	$195.35
Base Rent	$168.83	Base Rent	$177.27
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License Fee	.25
Total	$189.09	Total	$197.53
Base Rent	$201.84	Base Rent	$211.93
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License Fee	.25
Total	$222.10	Total	$232.19
Base Rent	$204.05	Base Rent	$214.25
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License Fee	.25
Total	$224.31	Total	$234.51
Base Rent	$212.19	Base Rent	$222.80
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License Fee	.25
Total	$232.45	Total	$243.06
Base Rent	$212.72	Base Rent	$223.37
Property Tax	.20.01	Property Tax	.20.01
License Fee	.25	License Fee	.25
Total	$232.98	Total	$243.62

APPENDIX F

In the Matter of:

SOUTHWIND MOBILE HOME PARK
RENT CONTROL HEARINGS.

TRANSCRIPT OF PROCEEDINGS

Jackson Municipal Building
State Highway 528
Jackson, New Jersey
on March 9, 1990 and April 3, 1990.

BEFORE:

James Williams, Chairman
William Santos
Charles Boyer
Ralph Arce
James M. Blaney, Esquire

APPEARANCES:

LANDY & LANDY, ESQS.,
BY: SAMUEL A. LANDY, ESQ.,
Attorneys for the Landlord.

MONIQUE LEYS, C.S.R.
79 Thousand Oaks Drive
Atlantic Highlands, New Jersey 07716
(201) 291-7954

[2] INDEX

Witness:

Robert Schnabel (Direct Examination by
Mr. Landy 61a

[3]

March 9, 1990 Southwind Mobile Home Park
Rent Control Hearing.

MR. BOYER: There was no meeting the last time because of –

MR. LANDY: Lack of a quorum.

MR. BOYER: – lack of a quorum. There is no minutes.

MR. SANTOS: Mr. Chairman, this was a matter that was scheduled for the February 20th meeting, unfortunately, due to the lack of a quorum, we could not hear that. I believe Mr. Landy, the attorney for Southwind Mobile Home Park, is present, and I believe he would like to address the Board regarding this application.

MR. LANDY: There's two different aspects to this application.

MR. BOYER: Does he have to be sworn in?

MR. BLANEY: He doesn't have to be sworn in.

MR. SANTOS: No usually –

MR. LANDY: I am not testifying. There is – I don't see any need for me to testify in regard to this matter. The facts are fairly simple. What's happened is that the tenants –

MR. SANTOS: Could you speak into the [4] microphone.

MR. LANDY: The tenants in a home in our park, Southwind Mobile Home Park, passed away. The home now transfers to the estate. The daughters of the prior tenant do not live in the home. They would like to sell the home. I am saying two things. Number one, your rent control ordinance is proper for the purpose of regulating rents. In other words, you have the right to regulate the rents of tenants who live in the mobile home park. The purpose of the rent control is to prevent us

from bringing unconscionable rent increases against those people who live in those homes so they don't have to sell those homes and they don't have to move. That's no problem.

The problem comes when you go beyond regulating rents and you actually take our property, and what a federal case called the Hall case says, is that if you apply rent control to a vacancy, then you have physically taken our property. And I am saying that when you apply rent control to the home that is to be sold and it is now transferred from the original owners – it is transferred to the estate, and the members of the estate do not live in the home, when you apply rent control in this situation and do not let us bring the rent up to fair market value rent, you have not regulated rent and [5] you have not protected people who live in the park, but you have instead taken our space, you've taken it. You've applied your rent – your rental to that space and you've increased the value of the home that the estate is going to sell. Under the Hall case – it's Santa Barbara, California, that's taken, and what I'm asking today – there's two things I am asking and this was the first thing I was asking. I am asking for a rent increase of just $3, from $190 per month to $193 on the space that has now passed to the estate, and the reason I'm asking for the increase is that your ordinance cannot constitutionally apply to the space that is passed from the people who live there to their heirs of the estate. So that's thing number one.

Thing number two, I have discussed with the representatives of the estate settling this case would they consent to my being given this $3 per month increase, and we haven't resolved that, but your ordinance prohibits us from entering into a consent agreement for that $3 a month increase, and I also say to you that that's uncon-

stitutional and I ask you to avoid that provision to allow me to negotiate with them and negotiate a rent that the estate and myself feels is fair and let us enter into a consent agreement.

That's my whole case.

[6] MR. SANTOS: All right. Mr. Chairman, the only comments I have regarding that is really not – the only one is that the ordinance as written, you know, I think it's our statutory mandate and our position says a causal judicial body to act on the ordinance as written. I don't think we have the authority to circumvent the ordinance, to second guess it, you know? I think it is very clear, Mr. Landy indicated the ordinance does not provide for something of that nature. I agree with him. The quorum (sic) does not provide for a negotiated agreement of $3 or $300. I don't think it is our ability to take it upon ourselves, in effect, to circumvent or ignore the ordinance. It's there. If Mr. Landy feels that this is, in fact, improper, illegal contrary to Hall versus Santa Barbara, that's something that should be addressed to the Township Committee. I don't think it is our ability – and certainly the application, I read it very thoroughly. I read our ordinance two or three times and the application, and my opinion concluded it does not meet the criteria of the ordinance. And I don't think it is our ability to amend the ordinance, or like I said, to circumvent it or anything else. We must comply with the ordinance as written, or our interpretation of the ordinance, and in our wildest dreams we couldn't interpret the ordinance to approve an application of this [7] nature, you know? I guess $3 or $300 is really not the point. What is the point is whether the ordinance does not permit this, and in my opinion, it clearly does not, and it's quite contrary to the intent of the Township Committee when they amended this ordinance recently.

MR. BOYER: I don't feel we have any jurisdiction to change the ordinance either. I just like to ask you one question though. What particular section of the ordinance are you considering that we should void? I don't understand that.

MR. LANDY: There's two different sections. I may not have them right – I believe that very recently the Mayor and Council removed, and I believe it is section 86:18-B which allows consent increases.

MR. SANTOS: That's correct.

MR. LANDY: Additionally, the first part that I'm referring to, the fact that your ordinance cannot apply to the situation of a home passing to an estate. I don't know what provision that is. What I'm referring to is the new federal case from the California courts called the Hall case. And that case held that if your rent control ordinance does not provide for vacancy decontrol it's unconstitutional, and I would ask that before this committee votes on my application either way, that we receive an opinion from your attorney telling you [8] either the ordinance is constitutional in both aspects or it is unconstitutional, and the reason I ask for that is this. You as the Board, as individual members, are protected. If your attorney renders an opinion saying the ordinance as written is constitutional, you can deny me my application. Personally, you are 100 percent protected. If you will not write that letter saying that the ordinance is constitutional and you then deny my application, you are individually responsible under the Tort Claims Act.

So I would suggest and request that you go about it that way, and I don't need a decision today.

MR. SANTOS: All right, now, Mr. Chairman, just regarding that matter, I would quorum now that Mr.

Landy continued, that I believe informally anyway – I have made a request that you submit a copy of this decision to the attorney, Mr. Blaney, so he would have the opportunity of the full decision and given ample time to review that and make, as you mentioned, a legal opinion. I don't know if it would apply, you know, as the – I don't know that much about the courts. I know that locally, and in New Jersey, I have two court decisions here that really seem to be contrary to that, and I have spoken to the Public Advocate and a number of other people that really support the Township Committee [9] on their changes, so certainly this is two views out there and two legal views as to what is not correct regarding this matter.

MR. LANDY: I will gladly send you a copy of the case to the attorney. I was supposed to do it earlier. My problem is so many people have told me that they have already submitted copies to yourself and the Mayor and Council since the –

MR. SANTOS: Yeah, I have seen summations on individual park owners' interpretations of the case, but I haven't seen the case. I don't think our attorney has seen it.

MR. WILLIAMS: I have a question here. When did the resident die? What time?

MR. LANDY: It was this year.

MR. WILLIAMS: January, December or –

MR. LANDY: I am not certain of the date, but it is November, December – December.

MR. WILLIAMS: And what corres – has there been correspondence between the estate and park owners?

MR. LANDY: The representatives of the estate are here right now, but, yes, there has been correspondence.

MR. WILLIAMS: I just want to know how [10] quickly the park owners moved on this. It is rather extra-

ordinary that this – in February after the – before he died in December, it doesn't give much time for the estate to get things settled.

MR. LANDY: I absolutely agree with you. We are attempting to work with the estate. The problem is even if we enter into a consent agreement, your Board can't approve it because of your ordinance.

MR. SANTOS: That's correct, so you are asking again, like I said earlier, us to do something that we are not permitted to do and we can't do.

MR. LANDY: It is correct. You cannot do it today unless your attorney renders an opinion that the ordinance is unconstitutional, and then you must do it today. And when I say today, I don't mean this minute. I mean after he renders his opinion.

MR. BOYER: We will have the attorney say something if he wishes, but I am certainly not going to expect an opinion tonight.

MR. BLANEY: Thank you, Mr. Chairman. Mr. Landy, I understand what you're saying. I haven't had an opportunity to review that decision. If I could ask you as a favor possibly to send me a copy. That's the Ninth Circuit I assume – Santa Barbara?

MR. LANDY: Yes.

[11] MR. BLANEY: I'd like to read that opinion.

MR. LANDY: I certainly will send it.

MR. SANTOS: I don't have a problem tabling this matter pending review of the law by our attorney, you know? I think when you look at everything all in all that the decision by the Committee was proper and correct for a number of reasons, but, you know, I certainly think our attorney should have the opportunity to review everything in its entirety, so I would motion that we table this to April the 3rd, and I will make it clear that number one, as far as the Board or I as a member of the

Board is concerned, the authorized rent which was previously approved by this Board by resolution and I think that is $190 and change – I have the exact amount here, at this point $190.30 I have, and that's the approved rent by this Board. Anything above that, you know – that's up to the individual, but that's the approved rent by the Board at this time.

MR. LANDY: I am not arguing with that.

MR. SANTOS: I am just saying –

MR. LANDY: I am asking for a rent increase of $3 or alternatively – I don't have the consent of the estate yet for the $3, but you couldn't agree to it under your ordinance anyhow.

[12] MR. SANTOS: That's correct.

MR. LANDY: Alternatively, I am saying that under the Hall case, which I am going to send to your own attorney for him to render his own opinion, my opinion of the whole case is what it says is you cannot take property. You can regulate rents. When your rent control ordinance does not allow vacancy decontrol, you have taken property, thus when you take a home that people lived in, now the home passes to ownership – to people who do not live there who just wish to sell the home, you are not regulating rents for the purpose of protecting someone's dwelling. You are regulating rent for the sake of the political proof for the tenants.

MR. BOYER: This home that has become the estate of the property or – this possession of the owners – correct – even though no one lives there it's still possession of the owners.

MR. LANDY: But the owners are deceased.

MR. BOYER: I understand that. I mean there were no tenants living there.

MR. LANDY: That's correct. It's an empty –

MR. BOYER: Why then should the tenants be expected to pay rent?

MR. LANDY: To pay the increased rent –

[13] MR. BOYER: Yeah.

MR. LANDY: – of the estate, because the purpose – going back, the purpose of rent control –

MR. BOYER: I understand the purpose of rent control, but I mean why would they want to assess the tenants with this?

MR. LANDY: The home is – what I have to be careful in making you understand – even though it is an estate, it moved within the family. Okay? Title actually transfers to the estate.

MR. BOYER: Yeah, I follow that.

MR. LANDY: That transfer, when it goes from party A to party B, I have the right under the Hall case to increase the rent because, in effect, nobody's living in the home. The space is vacant.

MR. WILLIAMS: Is the rent being paid?

MR. LANDY: The rent is currently being paid.

MR. WILLIAMS: The $190 is being paid?

MR. LANDY: Yes.

MR. WILLIAMS: Therefore, the rent is being paid and the rent has been established at $190.

MR. SANTOS: That's the base, which I feel like I said, that the ordinance is valid.

MR. WILLIAMS: I would have to go with the [14] ordinance that you cannot increase the rent. The same unit is there, therefore, the rent cannot change in that unit.

MR. LANDY: That's exactly what the vacancy decontrol is all about. Your ordinance says that the only way I can increase the rent is if the home comes off the lot. Okay? So that if I filed an eviction against the estate

under the grounds that the home cannot pass, that the lease cannot pass to the estate, if I filed that eviction and removed the home from the lot, your ordinance would allow me an increase. If I do not file for the eviction and that home sits there and they sell a home for 10, 15, $20,000, under your ordinance, I cannot increase the rent because I let the home sit there. Whereas if I'm the bad guy and sue and remove the home, now I can increase the rent for that space.

MR. BOYER: Who's paying rent on it? Do you know?

MR. LANDY: I don't know that we are accepting the rent, but they are sending in checks.

MR. BOYER: No, you said the rent was being paid.

MR. LANDY: The estate – it's one of the daughters, and I wish I knew the name, but they are here today. They are writing checks to the park. I do not [15] know –

MR. BOYER: In other words, there is a tenant there. Right?

MR. LANDY: No, they don't live in the home though. They are just paying the rent for the space without living there.

MR. BOYER: And they are owners or tenants?

MR. LANDY: They are owners, but not –

MR. BOYER: The owners are paying the rent.

MR. LANDY: Yes.

MR. SANTOS: Mr. Chairman, I made the motion that we table this pending further review by our attorney until the meeting of April the 3rd. I don't think it really says that this Board –

MR. BOYER: No, I just want to get a few things clear in my mind, because it's very confusing.

MR. SANTOS: Yeah, I just –

MR. LANDY: If you'd like, I'll state it again to make sure –

MR. BOYER: No, I understand most of what you said. It's just that I don't understand why the tenants overall should be assessed an increase or, you know, a space that the owner's responsible for. The [16] tenants are responsible for their own particular space.

MR. LANDY: Okay. Except that the tenants – the party on the lease was named Sophie and Kurt Bellaflott (sic). I am sure I am not saying the name right, but that was their names. They passed away.

MR. BOYER: Okay.

MR. LANDY: The estate now owns the home, not them, and the estate does not live in the home, but the estate is handing us rent checks for the home, but they do not live there.

MR. BOYER: Okay.

MR. WILLIAMS: The parties of the estate – do you know the age of the parties of the estate?

MR. LANDY: I don't know the ages.

MR. SANTOS: I think the requirements for a senior mobile home park – again, Mr. Landy is making an argument that should be made before the Committee or something because we have no jurisdiction to change the ordinance. Even Mr. Landy admits the ordinance as written doesn't permit this, but the Board certainly has not the ability to grant it. It just – we don't have that ability.

MR. LANDY: Except for the fact that the members of the Board could be individually liable if the – you need an opinion from your counsel whether or not [17] this ordinance is valid. That's what you need. Then based on his opinion, you can do what you deem proper. But to just enter an opinion at this time without an opinion from the attorney would certainly not be a prudent thing to do.

MR. BOYER: No, we won't do that.

MR. SANTOS: Well, you know, I look at it this way, too, Mr. Chairman. This ordinance was prepared by the township attorney. I don't know if the township attorney would prepare an ordinance that was unconstitutional or invalid.

MR. LANDY: The township attorney had no personal risk in the matter. So I don't see – his risk was his job as township attorney. I like the idea of the Rent Control Board attorney telling you whether or not the ordinance is constitutional. His risk is the liability for attorneys' fees and the rent increase.

MR. BOYER: Well, I recommend that we table this until we get an official opinion from our attorney.

MR. WILLIAMS: I am under the opinion that the rent was established, I think, July of last year or June and the rent cannot change because it's a – the rent is established for that unit. Therefore, the rent cannot change, so I don't think there's any – I would [18] just deny the increase period.

MR. BOYER: We'll table this for the next –

MR. SANTOS: Promise you will have a vote, Mr. Chairman, since Mr. Williams raised the question that you would just deny the application. I know where he is coming from, if clearly the application doesn't meet the ordinance, you know, whether or not the ordinance is proper, only the attorney, or I would assume eventually the Court would determine, to my knowledge, and certainly I think the Township Committee, the township attorney that the Board's knowledge at this time is that it is a valid ordinance. We had no indication that it is not. I am not sure if – like I said, if all the laws out there in California have what this decision specifically said, but there are certainly cases much closer to home that indi-

cate that the ordinance is proper. My conversation at the Public Advocate's office clearly indicates it is proper, so certainly I guess an argument could be made both sides, and that's why I assume that somewhere down the road a court eventually will determine the legality of this particular provision.

MR. BOYER: What do you want to vote on?

MR. SANTOS: Well, I made a motion that we table it and I guess you are of the same thing. But I [19] certainly have mixed feelings as to whether we should table it or dismiss the application. I am not sure.

MR. BOYER: Do you want to table it or vote now, Jim?

MR. WILLIAMS: By tabling it, I don't think we are going to accomplish anything. You would get back to me with the decision in California and so forth, it is still not going to mean that much to me if – or anyone on the Board either –

MR. BOYER: You want to get a legal opinion?

MR. WILLIAMS: So I would pass on the merits of our ordinance and nothing else – our rent control ordinance.

MR. BOYER: Let's take a vote.

MR. WILLIAMS: I move to deny that application for an increased rent for this particular unit.

MR. BOYER: Can we get a roll call?

MR. SANTOS: Neither of our motions were seconded, so we can't really call a vote. My motion to table it was not seconded. Mr. Williams' motion to dismiss the application –

MR. BOYER: I'll second your motion to table it.

[20]MS. SEVCENKO: Okay. Motion to table the matter pending review by our attorney. Santos.

MR. BLANEY: Did you withdraw your motion, Mr. Santos?

MR. SANTOS: Jim put me in a bad spot here. I'll vote yes for it provided, you know, we hold this, since my motion indicated April 3rd that Mr. Landy provides that case to Mr. Blaney's office within the next – well, within the next week or so so Mr. Blaney has adequate time to do his research and prepare a brief for the Board's review for the April 3rd meeting, and at that time, we can make a final decision.

MS. SEVCENKO: Williams.

MR. WILLIAMS: Yes.

MS. SEVCENKO: And Boyer.

MR. BOYER: I'll vote yes. So this will be tabled until we can get some more information and our attorney gives us an official opinion.

MR. LANDY: Thank you very much.

MR. BOYER: You know more about it than I do and it certainly doesn't make any sense to me, and I'd certainly like to hear the other side.

MR. LANDY: Certainly, certainly. Thank you.

MR. BOYER: Would anybody from the [21] audience like to come forward to give testimony?

MR. SANTOS: I don't think it could be called testimony.

MR. BOYER: But they've got to be sworn in. Right?

MR. SANTOS: We already made our decision.

MR. BOYER: Is this rendering an opinion or are you –

MR. LITWIN: I want to make a comment, and if I can ask a couple of questions on the same issue even though it is going to be tabled, because it does effect the – it does effect the future rent system in the park.

MR. BLANEY: Can we have your name please?

MR. LITWIN: John Litwin, Southwind Village, Jackson, New Jersey. What I want to say right now is I think the main issue here is – excuse me – is that does this par-

ticular space become decontrolled because of the death of the mother and father of these – of the parents of these people here in – who are the survivors of the beneficiaries of the will. In my opinion, that particular space still stays as a controlled space whether it goes to younger people or older people or anybody else. It does not apply to the fact that the people are young. That has no bearing on it. That space is still a controlled space. If that [22] space is sold and a person 55 years of age or older buys that space, it is still is a controlled space. It does not become decontrolled because two people have passed away. I have gone through the lease between the United Mobile Homes, my lease between United Mobile Homes and myself, and I have gone through the ordinance very carefully. There is nothing in any one of these documents that says that upon the death of parents that a mobile home space becomes decontrolled, and I don't understand what this whole issue is about. I can't see Mr. Landy coming up before you people and trying to get a $3 increase.

MR. SANTOS: What I gather – I agree with you a hundred percent that the ordinance as written and my knowledge of the law as written in the State of New Jersey, you are absolutely right. There is no provision to grant any type of an increase. The only reason I voted to table this tonight, and I had reservations, was to give our attorney – since Mr. Landy had requested that there was a decision in California, it may be applicable and may have some type of bearing on our ordinance. He requests that we give our attorney an opportunity to review it, to research it, but I think Mr. Blaney's office will come back with the same conclusion that the township attorney did, and that is a proper [23] ordinance, but I don't think, like I said, it doesn't do any harm to have Mr.

Blaney's office again reaffirm that. We didn't vote to pass along anything. We just voted to withhold that final approval pending another interpretation of this Santa Barbara case – Hall versus Santa Barbara.

MR. LITWIN: The Santa Barbara case that was ruled constitutional that particular rent control as far as – if I can recollect correctly on that.

MR. SANTOS: But as far as if it is applicable to this particular – to this particular up here, but that's something – I'm not an attorney you know, I'll leave the final decision to our attorney. I think the township attorney was correct any other people who appeared before the Board or the Committee, I should say, at the adoption of the ordinance, that they made very valid arguments. I know there's a couple specialists there that on rent control, they spoke, they spoke very eloquently and very factually, and I think the Committee acted properly.

MR. LITWIN: The only thing is I am saying that my understanding is that the rent was – wanted to be paid by the survivors – the beneficiaries – well, the widower or whatever you want to call it, and it was refused, because it would give them a point whereby they [24] could say, well, the rent was not paid in January and February. Now these people have paid the rent. It's been accepted by the United States Mobile Home by one of the representatives. It was sent in by registered mail receipt – return receipt required and it was signed by a representative in the office of United Mobile Homes. Now, whether legally they can have an opportunity to take and refuse the rent and yet, I don't understand under what basis they can refuse the rent, because if it's going to be paid and it is a controlled space, these people can continue paying their rent until they sell the coach to somebody who is of proper age, and I wish your attorney would take that under consideration.

MR. SANTOS: The only thing the Board can do, and I have spoken to people a number of times sitting up here, is to tell you what our approved rent is for that space. If the owner accepts it or not, that's something that the individual tenant or owner of the mobile home will have to address with their own attorney. Certainly, I think sending it registered mail is a good idea if there is a problem with that individual – that park owner accepting it. At least I think the tenant at that point would be covered.

I did make a good faith effort in that perhaps down the road, and I don't want to be perceived [25] as giving legal advice, but they should talk to their attorney. They can set up their own escrow account and so forth, but the Board only tells what the approved rent is for that space. I can't make the park owner accept it or reject it. That's up to him, but certainly no tenant should seek their own legal –

MR. LITWIN: I know that, but based on that particular – what I'm now telling the Board is the fact that there shouldn't be any reason why he should come before you people with something of this nature when actually the ordinance and everything that I have researched says that the lease is not terminated upon the death of the parents. I'd like to find out –

MR. SANTOS: At this time, I think the Board, all three of us that are here, agree with you, otherwise, we would have certainly approved that application this evening had we agreed with Mr. Landy, and certainly we do not, and like I said, just you are here for one meeting – for our attorney again to review the situation.

MR. LITWIN: I hope he takes that into consideration. Thank you.

MR. SANTOS: All right. Thank you.

MR. BOYER: Okay, Dora.

MS. CLARK: Dora Clark, Jackson Estates. [26] I know about this Santa Barbara case. Now the one I think Mr. Litwin was referring to was a case that went to the United States Supreme Court that stated rent control was constitutional. This is another case. But in the State of New Jersey I think that only went through the District Court in California. I am not positive of it, but we have different laws in this state, and as far as our legislatures, they have been trying – one particular legislature, an assemblyman, who has been trying to get decontrolled passed for years and years and years. It has not been passed so, therefore, your ordinance is constitutional, and as far as we know every tenant, if something happens, if I moved out and I didn't sell my home yet I would continue paying my rent, and one thing has to be made clear, decontrolled – these landlords are getting an increase in rent every year whether it is, you know – even if you didn't have decontrol – well, they're not at one rent. They are getting increases in rent every year. So there is no problem there, but I can't understand – last – the last meeting here that was canceled, I had heard that Clark was asking for $325 rent on that particular space or the tenants had to take the cold count. I can't see that. How – why is this $3 increase asked for? That's against our ordinance, and I hope that you people look into that and see we have [27] nothing in the state legislature that does say decontrol of rents, so we have that and there are court cases which some of the members of the Board have which has no decontrol in it. Thank you.

MR. WILLIAMS: I want to reply – something was just mentioned and it disturbed me very much. Apparently somebody passed the information along that I have made a quotation that the landlord should get this rent, $325,

which is quoted right now. I wish to state that I didn't discuss this case at all at the last meeting and I am of the opinion – personal opinion was the same as at the last meeting as it is right now that it should not have even been able to come before this Board.

MR. BOYER: We aren't going to turn this into a public hearing, but we wanted to get some extra opinions on this. We'll have two more people and that's all. What's your name?

MR. SMITH: Smith.

MR. BOYER: Smith, okay.

MR. SMITH: My name's Art Smith. I live in Jackson Estates. I was here at the last meeting and I have spoken to these young people who are – who constitute the estate of this home. And since the last meeting and at this particular night, people who are [28] interested in rent control from the parks done quite a bit of research. I think I agree with you gentlemen tonight because I don't think you have any jurisdiction whatsoever on this application, and I think Mr. Landy's way out of order when he gets our rent control attorney to rule on a constitutionality. If he wants him to check on the constitution or the ordinance, let him take it to Superior Court. It's been down in Superior Court. It's been ping-ponged back and forth. I have been involved in rent control for 16 years and I am quite aware at how good our rent control is.

I think it's a case of needy and greedy here. They were asking the young lady for $320 a month, which of course is ridiculous. She is not going to pay any more than what her mother paid. They are trying to get her to sign some sort of documents, she is not going to sign no documents for. They are trying to tell her that they are only going to allow her six months to sell her home, which is ridiculous. Now, we have homes in Jackson Estates who are

owned by people younger than 55 years of age. There was a particular home right across the street from me that is vacant, must have been five years it was vacant, and they paid their rent every month. Every time an increase came, they paid it. There was no problems. It's been sold to a person who is 55 or [29] older. There is no problem. I don't know why these people dig up a problem. I have a theory.

The theory could be if they can bulldoze this kid and get her home out of there, then threaten her with eviction, she has to violate the Rent Control Board or not pay her rent in order to be evicted. It's a lot of bologna telling the kid she's got to move her home. It's going to stay there and she's going to hold her guns, stand on her own two feet and pay her rent. They accepted her rent.

We have done some research since the last meeting. We can't find anything that addresses that you have to be 55 years of age to own the home. What we did find out was you have to be 55 or older to live in it. Now I know instances in our park where a man lives in it, he's older than 55, but his children own the home. That's parallel to these young couples. All they want to do is sell the home, and this guy's giving them a bad time about it. I think it is the needy and greedy. If they can get it completely off the space, they completely decontrol it.

MR. BOYER: Well, we are not going to hear the case tonight. We are really just trying to clear the air on what they are trying to present to us. We'll hold all discussions until we actually have the meeting.

[30] MR. SMITH: Well, this is my views anyhow and I don't really think, in my opinion, that our attorney should be put on the spot as far as the constitutionality of our ordinance. I really don't think he should be. It's been declared legal and constitutional. If he wants to

jeopardize the constitution, if he wants to check, let him go to Superior Court with it. He is asking for an increase which is in direct violation of our ordinance. I don't see why, and I have been arguing for years, why our Rent Control Board accepts an application from any park owner that is not complete and is not legal.

MR. BOYER: We haven't accepted an application.

MR. SMITH: You are hearing it tonight, aren't you?

MR. BOYER: Well, what are we going to do? Run him out of here?

MR. SMITH: No, I don't think you should hear it because it doesn't apply.

MR. BOYER: I am not going to argue with it. Can we have the next – the lady there. Would you like to say something please. Everybody has a right to speak.

MS. ROTH: Hi, I'm Joan Roth (sic) from [31] Southwind. I am the president of the association. I don't think Mr. Landy really is looking for an increase of rent, not for $2 and change. I think Mr. Landy is putting you people right on the line of ordinance 86:18-B. Either it's going to be passed here or they are going to take it to court and fight it. The $325 is in the ordinance if it's a empty space, they can change more rent. Mr. Landy was grossly misinformed from his first meeting here. There is nothing he did – there's nothing to state that he can charge $325 for a mobile home where the parents are deceased. He came back and he's asking for $2 and change, not $3, and it's because 86:18-B. He wants it back.

MR. BOYER: Thank you.

MR. WILLIAMS: All right, Joan, you want to stand there a minute. There's a $325 figure mentioned here. Where does that figure come from?

MS. ROTH: The figure comes from a decontrolled spot. If there's not a coach on the pad, the park owner has the right to charge $325.

MR. WILLIAMS: Where's the figure $325 come from? Just a moment. I want to try to get it down because this was attributed to me.

MS. ROTH: No, no, no, Jim.

MR. WILLIAMS: I am trying to pin it down.

[32] MS. ROTH: This has nothing to do with you. United Mobile Homes had written a letter to the Bellaflott children – the two children of the deceased parties, stating that the rent as of January 1 would be $325 of decontrolled space. That's what it was.

MR. WILLIAMS: Okay.

MS. ROTH: And it did come before United Mobile Homes. Mr. Landy is here and Mr. Landy could tell you they did state $325.

MR. WILLIAMS: Well, Mr. Landy tonight is quoting 193. Actually it was $325.

MS. ROTH: Tonight he is. The original – the original application was for $325.

MR. WILLIAMS: Okay, thank you.

MR. BOYER: If there's no further discussion, we are going to move on to Luxury Mobile Park.

[33]

April 3, 1990 Southwind Village Mobile Home Park
Rent Control Hearing

MR. BLANEY: Good evening, Mr. Landy.

MR. LANDY: Good evening. Ladies and gentlemen and members of the Board, Sam Landy of Southwind Mobile Home Park. I just want to be certain that you received the copy of the Barnegat Township lawsuit entit-

led Pinewood Estates of Michigan versus Barnegat Township. I sent this certified mail to the Rent Leveling Board and the township attorney, and I just wanted to make sure that you received that.

MR. BOYER: Yes, I received it.

MR. LANDY: Township attorney. Do you have that also?

MR. BLANEY: Yes, Mr. Landy.

MR. LANDY: Okay. Our application I wish to amend slightly. Basically what the application is is we're asking the Board to recognize that the Rent Control Ordinance of the Township of Jackson cannot apply where a home has transferred as the result of death, so that when the two residents of the home have both passed away, and the home transfers by estate, the rent controlled rent should not pass with that home, and what I'm saying is that your ordinance, which does not allow for vacancy decontrol is unconstitutional as the Barnegat – the [34] Pinewood Estates case states, and the Hall case in California, both Federal Appellate decisions, both say that you must have vacancy decontrol. Your ordinance does not have that.

I have a witness now, Robert Schnabel, which I'd like to call to testify. Come over, Mr. Schnabel.

MR. BLANEY: Mr. Landy, may I interject just one question?

MR. LANDY: Sure.

MR. BLANEY: You indicated that you're amending your ordinance. Are you still proceeding under 86-16 of the ordinance?

MR. LANDY: 86-18. When I say I am amending, I am just amending it in that last week when I spoke to the Board, immediately before I spoke to the Board, I thought we had a consent increase at $3. Mr. Santos said that he would not allow a consent increase anyhow. In

light of that, I only seek to amend the application so that we can increase the rent, not to $3, but to fair market value rent which will be testified to by my expert.

MR. BLANEY: Okay.

MR. LANDY: But when I'm asking for fair market value rent though, I have to say, I am not asking [35] this Board so much to approve 325 or whatever number fair market value rent is. I am really asking this Board to say our ordinance cannot apply to the transfer of a home. Once the home transfers, the new tenant is allowed to come in at fair market value rent. Once the tenant's in – he comes in on January 1st, on January 1st he comes in at fair market value rent. If that's 325, it's 325. On January 2nd, he is a rent controlled tenant. I cannot increase his rent from 325 without this Board's approval, but on day one when he comes in, by law, by the Third Circuit Appellate Division and by the Hall case, the Federal Court of Appeals in California, by law when the new tenant comes in, he comes in at fair market value rent. Then you can regulate the rent. Your ordinance does not say that. Your ordinance does not allow for vacancy decontrol. It says the rent is $190 today. When the new tenant moves in tomorrow, he moves in at $190, and that's unfair and I have my expert here, Bob Schnabel, to tell you why it is unfair. The case law says it is unfair, and I am asking you not to apply your ordinance when a home transfers.

MR. WILLIAMS: Mr. Landy, this Board is here only to interpret and enforce the ordinance as written by the Township of Jackson. We are not here to find other ways or means to increase or decrease rents. [36] We can only accept what the – how the ordinance is written. Now, the ordinance is written in such a way that in order to a certain criteria which the owner of the park may

receive increases or decreases, and the same thing applies to the tenants there.

MR. LANDY: Mr. Williams –

MR. WILLIAMS: It is outside of the realm of the ordinance and we have no jurisdiction.

MR. LANDY: You are wrong about that, Mr. Williams. You have an attorney sitting here with this Board. There may have been – well, the new case law which has come down from the Third Circuit makes it abundantly clear that you cannot enforce your ordinance as written.

Now I am going to present a witness to you, Robert Schnabel. I am presenting him for your attorney's benefit as well as your own. I have previously asked your attorney to render an opinion today as to whether or not the ordinance is enforceable. I have sent him both opinions, the Hall case and the Pinewoods case. Right now I am going to go through Mr. Schnabel's testimony. After Mr. Schnabel's testimony, I am, again, going to ask the township attorney to render an opinion, can you have an ordinance that does not allow for vacancy decontrol in light of the Pinewood case and [37] in light of the Hall case. After he renders his opinion, if his opinion is that in light of the Pinewood case, you must allow for vacancy decontrol, if that's his opinion and you then vote and deny me the increase under the Tort Claims Act, each one of you is going to be sued personally and will be held personally responsible.

If his opinion is that even in light of the Pinewood case and even in the light of the Hall case, you are entitled to deny me my rent increase, then you may deny the increase and when I bring suit against the Rent Leveling Board and the township, you as individuals are protected, and I am strictly suing the township, but that's what he is here for.

MR. WILLIAMS: Mr. Landy, we will go back another step. Number one, have you – do you have any tenant for this particular spot? Is there a tenant living there right now – a new tenant?

MR. LANDY: No, there is not a tenant living in the home.

MR. WILLIAMS: So everything then is tentative?

MR. LANDY: No, what actually has occurred is that Kurt and Sophie Bellaflott have passed away. They have died.

MR. WILLIAMS: I know the situation, but [38] right now you are looking for a ruling before the fact.

MR. LANDY: That's not correct. The home now transfers to the estate. It already has transferred to the estate. It goes from the parents who have died to their children – the heirs. That transfer, that passing, that time period, I am entitled to increase the rent from $190, which Kurt and Sophie Bellaflott were entitled to pay for fair market value rent for the years. That's what the case law says. That's what is constitutional. So it is nothing in the future. It is what is today.

MR. BOYER: Let us hear your witness' testimony. He has to be sworn in first.

MR. LANDY: Would you like to swear him in now and we'll do that?

MR. BLANEY: Raise your right hand. Do you promise that the testimony you are about to give is true to the best of your knowledge and belief?

THE WITNESS: I do.

MR. BLANEY: State your name please for the record.

THE WITNESS: Robert W. Schnabel, S-c-h-n-a-b-e-l.

ROBERT W. SCHNABEL,

called as a witness, having first been duly sworn, [39] testified as follows:

DIRECT EXAMINATION BY MR. LANDY:

Q. Mr. Schnabel, can you state for this Board what your profession is.

A. I'm a commercial real estate appraiser.

Q. Have you ever appraised mobile homes before?

A. Yes.

Q. On how many occasions?

A. I'd say between 50 and a hundred.

Q. Have you done appraisals in the State of New Jersey?

A. Yes.

Q. Are these appraisals regarding mobile home parks relied upon by banks?

A. Definitely.

MR. LANDY: I'd like to move Mr. Schnabel as an expert witness in regard to the value of mobile homes.

MR. BLANEY: I just have two questions. Are you licensed presently?

THE WITNESS: Appraisers aren't licensed as yet in New Jersey or anywhere else in the Northeast. I do have two designations.

MR. BLANEY: What are they?

[40] THE WITNESS: IFA and CREA.

MR. BLANEY: How long have you been an appraiser?

THE WITNESS: This is the tenth year full time.

MR. BLANEY: Mr. Chairman –

MR. WILLIAMS: What I am trying to do is trying to avoid a lot of discussion here tonight on something I don't think that should be before the Board in the first place. Number one, if the landlord – if the landlord had, in fact, rented this out to a different party and he

charged a certain amount of rent, then it would be a fact that he would comes here to us to either support or deny such increase. That is not the case. The increase has not been made. It's – everything's more or less if. This Board shouldn't have to deal with ifs. It should have to deal with facts, and facts according to our Rent Control Ordinance and nothing else, so anything else here is just to be – it's a waste of time and it should not have come before the Board in the first place.

MR. BOYER: Well, that's why I am trying to prevent all this back and forth bit. Since the gentlemen is here, let him testify and the Board will just have to hear the advice of the attorney, and then [41] we'll take it from there. We are not going to deny the right for anybody to speak.

Q. Mr. Schnabel, have you made efforts to determine the fair value market rent of the mobile rent space in the Southwind Mobile Home Park?

A. Yes, I have.

Q. And can you tell us what you found to be the fair market value rent of a mobile home park space in Southwind?

A. $325 per month.

Q. How did you arrive at that? Say it again.

A. $325 per month.

Q. Can you tell us how you arose – arrived at that decision?

A. I went out to the most directly competitive park that I could find in the area, which was Fountainhead, and that's what he charges for the new sites.

Q. Now, did you examine the mobile home which belonged to the estate of Kurt and Sophie Bellaflott?

A. I did.

Q. And did you determine whether or not that home is currently for sale?

A. It is.

Q. At what price is the home for sale?

A. It's being offered at $25,000.

[42] Q. Were you able to reach a determination as to whether the home's value would change if the rent was $325 as opposed to $190?

A. Yes.

Q. What would happen to the value of the home?

A. It would decrease.

Q. Are you able to arrive at a conclusion as to how much the value of the home would decrease?

A. I can estimate that value.

Q. Okay, and how would you do that?

A. It's a three step procedure. The estimated market rent is 325 per month. The rent at present at that trailer is $190. There's a difference of $135 per month. On an annualized basis, the capitalized value, you would take $135 multiply it by 12 months and capitalize that figure at a market rate, which would be a rate at which equity capital could be attracted to such an investment, and my opinion that nine and a half percent rate would be sufficient to attract equity capital to such a venture, and using a capitalization rate of nine and a half percent, I arrive at $17,050. I rounded it off to 17,000. Based on the asking price of $25,000, we have a net residual value to the home of 8,000.

[43] Q. So the value of this home without rent control is what?

A. 8,000 in my opinion.

Q. Can you describe the Bellaflott home for me.

A. I have here the listing sheet, and this afternoon I inspected it, and it's a Forest Park model. It is 12 feet wide by 60 feet long. It is a 1972. Has two bedrooms and a bath. It has a utility room, hot water tank, and

it's got an enclosed porch with a small gas heater. It's got central air and an eight by ten shed. It is located at 523 Fifth Street. It is in average condition. It's ready to move in in my opinion.

Q. Now, in regards to the damages that the landlord suffers as a result of their inability to increase rent when a home is transferred – when homes in the park have transferred, can you give me an estimate as to what that cost is over the years with 250 spaces in Southwind?

A. Well, if you subscribe to the 17,000 that's actually a leasehold estate benefit accruing to the owner of the home. If you took 17,000 and multiplied it by the 250 home sites, you'd come up with $4,250,000 in damages that would be sought.

MR. LANDY: I have no further questions of [44] Mr. Schnabel.

MR. BOYER: Okay. We've listened to the testimony, but still the last time you were here, we told you about the jurisdictional aspect of this. All right?

MR. LANDY: Well, again I deferred to the attorney for the Rent Board, and I would like to just state to the attorney for the Rent Board, I do not understand why the Rent Board has an attorney if not to render a decision just as this. Here we are with an ordinance, your Rent Control Ordinance, with the provision in the ordinance. I am here making application as required by the ordinance that asked for an exemption, you have a form – you have a form to make an application for an exemption. I am here under the form asking for an exemption from your Rent Control Ordinance. I am asking for the exemption based not only on the fact that the park owners have always believed it's unconstitutional not to allow us to increase the rent, but on March 7, 1990, the Third Circuit Court of Appeals rendered a decision which

states on page six, We find that appellants have alleged sufficient facts to support of findings that the ordinance in conjunction with state law provides for a permanent physical occupation constituting the taking without provision for compensation and violation of the Fifth and Fourteenth Amendments.

[45] Now, in light of this decision rendered on March 9, 1990, how can this Board now enforce this ordinance and not allow us to increase the rent at fair market value?

MR. BOYER: It is not up to this Board to enforce any ordinance.

MR. LANDY: It is up to the township. The township attorney can tell us whether he recommends you grant or deny my petition and you can grant or deny it.

MR. BOYER: He can advise us or he can recommend anything. He is still here to uphold the ordinances, you know, put forth by the Township Committee. We have to make all of our decisions based on the ordinances accepted and passed by the Township Committee. We are not going to change any of these ordinances nor are we going to act outside any of them.

MR. LANDY: I am specifically disagreeing with your position. There is a reason why the townships spend money for the lawyer to sit in that seat.

MR. BLANEY: I am not the township counsel, Mr. Landy.

MR. LANDY: No, I understand that, but the township does pay the Rent Leveling Board's attorney and there is a reason why the township pays to have an attorney here. The township pays to have an attorney [46] with the Rent Leveling Board as well as with the Mayor and Committee because when a question exactly like the question I bring before you today arises, he's there to answer it.

MR. BOYER: Well, let the attorney speak.

MR. BLANEY: I want to check, Mr. Landy, if you're done with your presentation because you asked for my opinion. I'll present it. I think Mr. Williams presented a very valid point and that is that this Board was created under ordinance by the Township Committee and has to abide by the rules and regulations and the ordinances promulgated by the township. We have those in front of us now. In the first instance, I think it is this Board's obligation to follow those rules and regulations until they are abolished, amended or otherwise repealed by the township, and that hasn't been done yet.

While I can appreciate your argument in the cases you have cited, perhaps the Township Committee is the more appropriate form to bring those cases and arguments to in an effort on your half to amend or to repeal them. At this juncture, I would advise the Board that the township ordinances as written dictate the decisions that they have to make. And even aside from that question – I don't want to get into a legal [47] argument with you even. We have talked on the telephone several times and I think you are aware of my decision and you've asked for it, so I think I'll place it on the record. Even aside from the fact that I think this Board is constrained by the regulations and the ordinances promulgated by the governing body of Jackson if we move one step beyond that, my role as the Board's attorney is to advise them as to what the law is today, not as to what I think the law will be in the future or even as to what you will think it will be in the future.

You've cited a Ninth Circuit case which has some similarities to the factual scenario you brought today. However, as an attorney, I think you will agree, that's the Ninth Circuit. We are in the Third Circuit, and it's not

binding. Therefore, it is not the law of this jurisdiction, and I am not going to advise my client that perhaps some day it may be and that therefore, they should anticipate that and rule the way the Hall Court ruled.

Second, you were kind enough, and I appreciate it, to provide to me a Third Circuit Court of Appeals case which also touched on some of the issues you are raising today. However, that case – and again, I don't want to get in a legal argument with you, because right now I am advising my client and just putting my [48] position on the record for your benefit as well as theirs. That case dealt with whether the District Court properly dismissed the complaint of a mobile home park operator in Barnegat Township. Anything else is dicta. The question there was whether the complaint was properly dismissed and the Court said no, it is not. Remanded the case to the District Court with a directive to find – to allow testimony as to each of the facts in the complaint and see if they approved the case, and the Court stated in the case – I am not sure which page – that perhaps they did state a claim. However, at this time, and again, I hark back to my original statement, that I can't advise my client as to what I think the law will be. At this time, the posture of that case is simply a case that's pending before a District Court judge to determine whether if the plaintiff proves all of the facts alleged in the complaint a taking has occurred. That determination has not been made by either the Circuit Court or the District Court yet. There is a possibility at some time in the future that that determination may be made, but I feel constrained to advise this Board that until that time, the ordinances as written is governing, and their decisions must be made in light of those ordinances, and that's my opinion stated on the record.

[49] I know we disagree, however, that's my advise to my client. I would also advise them that any decision they make tonight, based on my testimony right here where I put on the record, is based on the advise of their attorney, so there can be no bad faith allegations and none of the sort of things that you mentioned before.

I am advising them that the ordinance is constitutional. It is valid as written. They have a right to determine your application in light of that ordinance and they have a right to rely on my advise. That's what they are paying me for. That's what they should get. And with that, I'll let the Board make their determination.

MR. LANDY: Thank you.

MR. BLANEY: Thank you.

MR. BOYER: On the advice of the attorney which we just heard, I am recommending that we reject your application. Anybody else feel they want to speak up, go ahead.

MR. WILLIAMS: Again, my feelings are that the application as presented has no merits under our Rent Control Ordinance.

MR. BOYER: Once again, I would like to recommend that this should probably be taken to the Township Committee because until they can change [50] something, we are not going to act on anything outside of the ordinance.

MR. LANDY: I'm just waiting for a formal vote by the Committee today.

MR. WILLIAMS: I make a motion to deny the application as submitted.

MR. BOYER: I second the motion. Roll call please.

MS. SEVCENKO: Arce.

MR. ARCE: Yes.

MS. SEVCENKO: Mr. Williams.

MR. WILLIAMS: Yes.

MS. SEVCENKO: And Boyer.

MR. BOYER: Yes.

MR. LANDY: Are there two other people sitting on the Board? Can I have their vote please?

MR. BOYER: You have the vote of the quorum.

MR. LANDY: I'd like to at least hear the vote of the other persons. How many votes did I hear?

MR. BOYER: The people seating here are alternates.

MR. BLANEY: I apologize. There is a gentleman at the end of the table. This is his first meeting and I didn't realize he is an alternate taking [51] the place of Mr. Santos tonight. He's heard your application. He's heard my opinion. He has the right to vote.

MS. SEVCENKO: Mr. Pasquarella.

MR. PASQUARELLA: Yes.

MR. BLANEY: Thank you, Mr. Landy.

[52] CERTIFICATE

I, MONIQUE LEYS, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony that is taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of either of the parties to the action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

/s/ Monique Leys
Monique Leys, C.S.R.
A Notary Public of the State of
New Jersey

My commission expires:
July 17th, 1994

APPENDIX G

46:8C-3. Sale of mobile home within park; notice to and approval by owner or operator

a. No mobile home park shall deny any resident of such mobile home park the right to sell said resident's mobile home within the park or require the resident to remove the mobile home from the park solely on the basis of the sale thereof. The park may reserve the right to approve the purchaser of said mobile home as a tenant, but such permission may not be unreasonably withheld and the park shall not exact a commission or fee with respect to the price realized by the seller unless the park owner or operator has acted as agent for the mobile home owner in the sale pursuant to a written contract.

When a resident of the park plans to sell his home, he shall give written notice to the park owner or operator. Before a home in the park may be sold, the seller shall provide the buyer with an application for park tenancy, which shall be returned to the park owner or operator by the prospective buyer in person. On the private sale of a mobile home, failure to comply with the application procedure as described, before any sales agreement is entered into, shall absolve the park owner or operator from the requirements of Sec. 2e and 2d, and Sec. 4 of this act.[1] The preceding is not applicable if a buyer plans to immediately remove a home from the park. Either a mobile home owner, mobile home purchaser or park owner or operator aggrieved by the failure of any person to comply with the provisions of this section may seek damages and reasonable costs and attorneys fees in a complaint, cross-claim, or third party complaint in a court of competent jurisdiction.

b. No contract for the sale of a mobile home, where the buyer and the seller intend the mobile home remain in the park, shall be valid unless the seller has advised the purchaser, in writing, of the park owner or operator's right to approve the purchaser as provided for in this section.

c. If the mobile home park owner or operator shall unreasonably withhold approval of a purchaser of a mobile home as a tenant, either the mobile home owner who is selling or the intended purchaser of the mobile home may institute an action in the Superior Court. A plaintiff who shall recover a judgment in any such action shall be awarded all damages proximately caused by the unreasonable refusal of the mobile home park owner or operator to approve the sale together with the costs of the action and reasonable attorneys' fees. In any such action the court shall also be empowered to order the admission of the purchaser of the mobile home to the mobile home park.

L.1973, c. 153, §3. Amended by L.1977, c. 350, §2, eff. Jan. 30, 1978.

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[1] Sections 46:8C-2, 46:8C-4.

APPENDIX H

2A:18-61.1. Removal of residential tenants; grounds

No lessee or tenant or the assigns, under-tenants or legal representatives of such lessee or tenant may be removed by the county district court or the Superior Court from any house, building, mobile home or land in a mobile home park or tenement leased for residential purposes, other than owner-occupied premises with not more than two rental units or a hotel, motel or other guest house or part thereof rented to a transient guest or seasonal tenant, except upon establishment of one of the following grounds as good cause:

a. The person fails to pay rent due and owing under the lease whether the same be oral or written;

b. The person has continued to be, after written notice to cease, so disorderly as to destroy the peace and quiet of the occupants or other tenants living in said house or neighborhood;

c. The person has willfully or by reason of gross negligence caused or allowed destruction, damage or injury to the premises;

d. The person has continued, after written notice to cease, to substantially violate or breach any of the landlord's rules and regulations governing said premises, provided such rules and regulations are reasonable and have been accepted in writing by the tenant or made a part of the lease at the beginning of the lease term;

e. The person has continued, after written notice to cease, to substantially violate or breach any of the covenants or agreements contained in the lease for the premises where a right of reentry is reserved to the landlord in the lease for a violation of such covenant or agreement,

provided that such covenant or agreement is reasonable and was contained in the lease at the beginning of the lease term;

f. The person has failed to pay rent after a valid notice to quit and notice of increase of said rent, provided the increase in rent is not unconscionable and complies with any and all other laws or municipal ordinances governing rent increases;

g. The landlord or owner (1) seeks to permanently board up or demolish the premises because he has been cited by local or State housing inspectors for substantial violations affecting the health and safety of tenants and it is economically unfeasible for the owner to eliminate the violations; (2) seeks to comply with local or State housing inspectors who have cited him for substantial violations affecting the health and safety of tenants and it is unfeasible to so comply without removing the tenant; simultaneously with service of notice of eviction pursuant to this clause, the landlord shall notify the Department of Community Affairs of the intention to institute proceedings and shall provide the department with such other information as it may require pursuant to rules and regulations. The department shall inform all parties and the court of its view with respect to the feasibility of compliance without removal of the tenant and may in its discretion appear and present evidence; (3) seeks to correct an illegal occupancy because he has been cited by local or State housing inspectors and it is unfeasible to correct such illegal occupancy without removing the tenant; or (4) is a governmental agency which seeks to permanently retire the premises from the rental market pursuant to a redevelopment or land clearance plan in a blighted area. In those cases where the tenant is being removed for any reason specified in this subsection, no

warrant for possession shall be issued until P.L.1967, c. 79 (C. 52:31B-1 et seq.) and P.L.1971, c. 362 (C. 20:4-1 et seq.) have been complied with;

h. The owner seeks to retire permanently the residential building or the mobile home park from residential use or use as a mobile park, provided this paragraph shall not apply to circumstances covered under paragraph g. of this section;

i. The landlord or owner proposes, at the termination of a lease, reasonable changes of substance in the terms and conditions of the lease, including specifically any change in the term thereof, which the tenant, after written notice, refuses to accept; provided that in cases where a tenant has received a notice of termination pursuant to section 3 g. of P.L.1974, c. 49 (C. 2A:18-61.2), or has a protected tenancy status pursuant to section 9 of the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c. 226 (C. 2A:18-61.30) the landlord or owner shall have the burden of proving that any change in the terms and conditions of the lease, rental or regulations both is reasonable and does not substantially reduce the rights and privileges to which the tenant was entitled prior to the conversion;

j. The person, after written notice to cease, has habitually and without legal justification failed to pay rent which is due and owing;

k. The landlord or owner of the building or mobile home park is converting from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites, except as hereinafter provided in subsection *l.* Where the tenant is being removed pursuant to this subsection, no warrant for possession shall be issued until this act has been com-

plied with. No action for possession shall be brought pursuant to this subsection against a senior citizen tenant or disabled tenant with protected tenancy status pursuant to the "Senior Citizens and Disabled Protected Tenancy Act," P.L. 1981, c. 226 (C. 2A:18-61.22 et seq.), as long as the agency has not terminated the protected tenancy status or the protected tenancy period has not expired;

l. (1) The owner of a building or mobile home park, which is constructed as or being converted to a condominium, cooperative or fee simple ownership, seeks to evict a tenant or sublessee whose initial tenancy began after the master deed, agreement establishing the cooperative or subdivision plat was recorded, because the owner has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing. However, no action shall be brought against a tenant under paragraph (1) of this subsection unless the tenant was given a statement in accordance with section 6 of this amendatory act.;[1]

(2) The owner of three or less condominium or cooperative units seeks to evict a tenant whose initial tenancy began by rental from an owner of three or less units after the master deed or agreement establishing the cooperative was recorded, because the owner seeks to personally occupy the unit, or has contracted to sell the unit to a buyer who seeks to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;

(3) The owner of a building of three residential units or less seeks to personally occupy a unit, or has contracted to sell the residential unit to a buyer who wishes to personally occupy it and the contract for sale calls for the unit to be vacant at the time of closing;

m. The landlord or owner conditioned the tenancy upon and in consideration for the tenant's employment by the landlord or owner as superintendent, janitor or in some other capacity and such employment is being terminated.

L.1974, c. 49, §2, eff. June 25, 1974. Amended by L.1975, c. 311, §1, eff. Feb. 19, 1976; L.1981, c. 8, §1, eff. Jan. 26, 1981; L.1981, c. 226, §13, eff. July 27, 1981.

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[1]Section 2A:18-61.9.

2A:18-61.1b. Eviction alleging permanent retirement of premises from residential use; presumptions and conditions; contents of notice

If an owner seeks an eviction alleging permanent retirement of the premises from residential use pursuant to subsection h. of section 2 of P.L.1974, c. 49 (C. 2A:18-61.1) and if, pursuant to land use law, nonresidential use of the premises is not permitted as a principal permitted use or is limited to accessory, conditional or public use, a rebuttable presumption is created that the premises are not and will not be permanently retired from residential use. Residential premises that are unoccupied, boarded up or otherwise out of service shall not be deemed retired from residential use unless they are converted to a principal permitted nonresidential use. No tenant shall be evicted pursuant to subsection h. of section 2 of P.L. 1974, c. 49 (C. 2A:18-61.1) if any State or local permit or approval required by law for the nonresidential use is not obtained. Nothing contained in this section shall be deemed to require obtaining a certificate of occupancy

for the proposed use prior to an eviction. The detail specified in notice given pursuant to subsection d. of section 3 of P.L.1974, c. 49 (C. 2A:18-61.2) shall disclose the proposed nonresidential use to which the premises are to be permanently retired.

L.1986, c. 138, §2, eff. Oct. 29, 1986.

2A:18-61.2. Removal of residential tenants; required notice; contents; service

No judgment of possession shall be entered for any premises covered by section 2 of this act,[1] except in the nonpayment of rent under paragraph a. or f. of section 2, unless the landlord has made written demand and given written notice for delivery of possession of the premises. The following notice shall be required:

a. For an action alleging disorderly conduct under paragraph b. of section 2, or injury to the premises under paragraph c. of section 2, or any grounds under paragraph m. of section 2, three days' notice prior to the institution of the action for possession;

b. For an action alleging continued violation of rules and regulations under paragraph d. of section 2, or substantial breach of covenant under paragraph e. of section 2, or habitual failure to pay rent, one month's notice prior to the institution of the action for possession;

c. For an action alleging any grounds under paragraph g. of section 2, three months' notice prior to the institution of the action;

d. For an action alleging permanent retirement under paragraph h. of section 2, 18 months' notice prior to the institution of the action, and provided that, where there

is a lease in effect, no action may be instituted until the lease expires;

e. For an action alleging refusal of acceptance of reasonable lease changes under paragraph i. of section 2, one month's notice prior to institution of action;

f. For an action alleging any grounds under paragraph *l.* of section 2, two months' notice prior to the institution of the action, and provided that, where there is a written lease in effect, no action shall be instituted until the lease expires;

g. For an action alleging any grounds under paragraph k. of section 2, three years' notice prior to the institution of action, and provided that, where there is a written lease in effect, no action shall be instituted until the lease expires.

The notice in each of the foregoing instances shall specify in detail the cause of the termination of the tenancy and shall be served either personally upon the tenant or lessee or such person in possession by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode with some member of his family above the age of 14 years, or by certified mail; if the certified letter is not claimed, notice shall be sent by regular mail.

L.1974, c. 49, §3, eff. June 25, 1974. Amended by L.1975, c. 311, §2, eff. Feb. 19, 1976; L.1981, c. 8, §2, eff. Jan. 26, 1981; L.1986, c. 138, §1, eff. Oct. 29, 1986.

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[1] Section 2A:18-61.1.

APPENDIX I

40:55D-62. Power to zone

a. The governing body may adopt or amend a zoning ordinance relating to the nature and extent of the uses of land and of buildings and structures thereon. Such ordinance shall be adopted after the planning board has adopted the land use plan element and the housing plan element of a master plan, and all of the provisions of such zoning ordinance or any amendment or revision thereto shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements; provided that the governing body may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element, but only by affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body for so acting set forth in a resolution and recorded in its minutes when adopting such a zoning ordinance; and provided further that, notwithstanding anything aforesaid, the governing body may adopt an interim zoning ordinance pursuant to subsection b. of section 77 of P.L.1975, c. 291 (C. 40:55D-90).

The zoning ordinance shall be drawn with reasonable consideration to the character of each district and its peculiar suitability for particular uses and to encourage the most appropriate use of land. The regulations in the zoning ordinance shall be uniform throughout each district for each class or kind of buildings or other structures or uses of land, including planned unit develop-

ment, planned unit residential development and residential cluster, but the regulations in one district may differ from those in other districts.

APPENDIX J

RENT CONTROL, MOBILE HOME PKS.

Chapter 86

RENT CONTROL FOR MOBILE HOME PARKS

§86.1. Definitions.
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[HISTORY: Adopted by the Township Committee of the Township of Jackson 7-10-73 as Ord. No. 37-73; amended in its entirety 8-4-80 by Ord. No. 35-80. Subsequent amendments noted where applicable.]

GENERAL REFERENCES

Mobile home dealerships – See Ch. 76.
Senior citizens' mobile home parks – See Ch. 77.
Mobile homes and trailers – See Ch. 78.
Trailers and campsites – See Ch. 99.
Private campgrounds – See Ch. 117.

§86-1. Definitions.

For the purpose of this chapter, the terms used herein are defined as follows:

AVAILABLE FOR RENT TO TENANTS – Fit for rental as defined by the statutes, codes and ordinances in effect in the State of New Jersey, County of Ocean and Township of Jackson, and occupied or unoccupied and offered for rent.

BASE RENT – The payable rent charged and received for the mobile home rental space over the previous twelve-month period, exclusive of any or all of the fol-

lowing: all real property taxes or license fees charged by the township, any tax surcharges and any increases for major capital improvements.

CONSUMER PRICE INDEX – That consumer price index (all items) for all urban consumers of the United States, published periodically by the Bureau of Labor Statistics of the United States Department of Labor. [Amended 4-4-83 by Ord. No. 14-83]

INVESTMENT [Added 4-4-83 by Ord. No. 14-83; repealed 2-27-84 by Ord. No. 1-84]

MOBILE HOME RENTAL SPACE – That portion of a trailer or mobile home park rented or offered for rent for the purpose of parking a trailer or mobile home for living and dwelling purposes to one (1) individual or family unit, together with all privileges, services, equipment, facilities and improvements connected with the use or occupancy of such portion of the property. "Mobile home rental spaces" which are vacant or are newly constructed and rented for the first time are exempted, and the initial rent may be determined by the owner. All subsequent rents will be subject to the provisions of this chapter.

PROFESSIONAL FEES – Fees paid to an attorney, an engineer or an accountant for the performance of services.

REASONABLE AND NECESSARY OPERATING EXPENSES [Added 2-27-84 by Ord. No. 1-84] – All expenses actually incurred and paid by the mobile home park owner for the operation of the park during the period reflected in gross income computed in accordance with the provisions and limitations of this chapter. In computing "reasonable and necessary

operating expenses," the following limitations shall apply in all cases:

A. Operating expenses shall not include mortgage amortization, mortgage or other interest, depreciation, fines or penalties.

B. Taxes shall be limited to amounts actually paid solely on the mobile home park less the amounts of any tax surcharges paid by tenants.

C. Repair and maintenance expenses shall not include expenditures for capital improvements.

D. Professional fees, including legal and accounting expenses, shall be limited to actual costs for the day-to-day operation of the park. Legal and accounting expenses resulting solely from an application made pursuant to this chapter or resulting from legal attacks on this chapter shall not be considered "reasonable and necessary operating expenses" as defined in this chapter.

E. Management expenses shall be limited to amounts paid for actual services performed by a manager or management firm. In no event shall a fee for management services exceed five percent (5%) of the gross income.

SERVICE – Mailing to the home address, by regular mail, certified to by affidavit, which affidavit of service must be retained in the records of the person causing "service."

TENANTS – Mobile home owners and occupants who rent or lease a mobile home rental space from the mobile home park owner.

§86-2. Establishment of rents.

Establishment of rents for mobile home rental spaces which are available for rent to tenants and to which this chapter is applicable shall hereafter be determined by the provisions of this chapter.

§86-2.1. Disclosure of rent. [Added 12-27-1989 by Ord. No. 52-89]

A. The landlord shall provide and disclose to all new tenants, in writing upon execution of a lease, the sums allocated in the gross rent paid to the landlord for the following items:

(1) Base rent.

(2) Tax surcharge.

(3) License fee.

(4) Any other special expense.

B. A copy of said disclosure shall be filed with the Rent Control Board within thirty (30) days of execution of the same.

§86-3. Rental increases.

No owner of a mobile home park or trailer park may demand, request or receive a rental increase unless authorized pursuant to and in accordance with the provisions of this chapter. Any rental increase at any time in excess of that authorized by the provisions of this chapter shall be void.

§86-4. Annual increase; decreases. [Amended 4-4-83 by Ord. No. 14-83; 2-27-84 by Ord. No. 1-84]

A. An owner may receive from a tenant on an annual basis a percentage increase for the occupancy of a mobile home park space, which increase is to be computed based upon the percentage increase in the consumer price index (CPI) three (3) months prior to the effective date of the rental increase and the consumer price index fifteen (15) months prior to the effective date of said rental increase. In no event shall such annual percentage increase exceed a maximum of five and five-tenths percent (5.5%). The percentage allowable increase calculated hereunder shall be applied to the tenant's existing base rent.

B. Any owner seeking such an increase in rent shall notify the tenant and the Rent Leveling Board thereof at least thirty (30) days prior to the effective date of the increase, and of the calculations involved in computing the increase, by advising them of the consumer price index fifteen (15) months prior to the effective date of the increase, the percentage increase in the consumer price index, the allowable rental increase, the amount of base rent before and after the proposed increase and the effective date of the proposed increase. The failure of the owner to provide the tenant and the Rent Leveling Board with this information shall make any increase void, and the tenant shall recover any increase which the tenant may have paid.

C. In the event of a decrease in the consumer price index, any tenant may receive from the owner on

an annual basis a percentage decrease in the amount of base rent being charged for the occupancy of a mobile home rental space, which decrease is to be computed based upon the percentage decrease in the consumer price index three (3) months prior to the effective date of the rental decrease and the consumer price index fifteen (15) months prior to the effective date of the rental decrease. Said percentage decrease in the consumer price index shall then be applied to the tenant's existing base rent.

D. Any tenant seeking such a decrease in rent shall notify the owner and the Rent Leveling Board thereof at least thirty (30) days prior to the effective date of the decrease of the amount of base rent before and after the proposed decrease and the effective date of the proposed decrease. The failure of the tenant to provide the owner and the Rent Leveling Board with this information shall make any decrease void, and the owner shall recover any such decrease.

E. Annual increases pursuant to this section may be obtained by an owner on an interim basis during the pendency of an application for a rental increase under any other provision of this chapter.

§86-5. **Rental increase for financial requirements.**

A. It is expressly recognized that an efficient landlord is entitled to a just and reasonable rate of return from his property. To that end, a landlord is permitted to make application to the Rent Leveling Board for rental increases on the basis that rents allowed by this chapter prevent the landlord from

receiving a just and reasonable rate of return. Such rental increases shall be allowed on the basis of the formula set forth in this provision, which formula shall be the exclusive formula for determining a just and reasonable rate of return. Upon application duly made pursuant to the requirements of this chapter, the Rent Leveling Board may grant a park owner a rental increase upon his showing that his reasonable and necessary operating expenses for his last full calendar year exceeded fifty-seven and the five-tenths percent (57.5%) of his gross annual income. If the Rent Control Board is satisfied that such a showing has been established, then the Board may grant a rental increase sufficient to restore reasonable and necessary operating expenses to fifty-seven and five-tenths percent (57.5%) of the gross annual income [Amended 2-27-84 by Ord. No. 1-84]

B. Application requirements. [Amended 2-27-84 by Ord. No. 1-84]

(1) In any application under this section, the owner shall, in addition to those requirements mandated by other sections of this chapter, specifically certify:

(a) That he is an efficient operator of the mobile home park.

(b) That the mobile park is in a safe and sanitary condition.

(c) That the owner is in full compliance with all state and local laws pertaining to tenants' rights.

(2) The owner shall make application to the Rent Control Board, together with all necessary certifications, and shall further certify that the owner is not receiving a just and reasonable rate of return pursuant to the formula set forth herein. The application shall include the amount of increase and percentage of increase requested, together with detailed statements of income and expenses for the current fiscal year and for the past two (2) fiscal years. If at any time during the course of consideration of an increase pursuant to the provisions of this section the Rent Control Board shall determine that a landlord is not in substantial compliance with any or all of the above requirements, the Board may delay further consideration of the application for an increase and may delay the effective date of the increase until such time as the landlord has corrected any such deficiency.

C. Prior to the hearing by the Board on an application under this section, the owner must post, in a conspicuous place in or about the mobile home park, a notice of said application setting forth the basis for said application and the date, time and location of the formal hearing. Said notice must be posted at least seven (7) days prior to the proposed date of the formal hearing.

D. In order to provide the Rent Leveling Board with sufficient time to review the required financial data and schedule a hearing, it is required that an applicant submit an application for a rental increase under this section at least ninety (90) days prior to the effective date of the proposed rental increase.

E. In determining the need for a rental increase under this section, penalties, fines, interest and depreciation shall not be considered as reasonable and necessary operating expenses and shall not be included as proper expenses. In addition, an owner shall be entitled only to those ordinary and necessary professional fee expenses which are actually incurred in the ordinary course of business. [Amended 2-27-84 by Ord. No. 1-84]

F. The most recent current rents being charged by a landlord on uncontrolled rental spaces are admissible in evidence against such owner at any hearings held in connection with applications for rental increases under this section, and such rents create a rebuttable presumption that the charging of the same rent on all rental spaces would provide the owner with sufficient funds to pay all reasonable and necessary operating and maintenance expenses and provide the permitted rate of return. [Amended 2-27-84 by Ord. No. 1-84]

G. In the event that the financial information submitted by the owner reveals a loan made by the owner (or by a shareholder if the owner is a corporation), to the mobile home park, the interest expense on any such loan shall be computed based on a rate which is the current prevailing savings rate being paid on thirty-month savings institution certificates.

H. No owner shall be permitted to receive an increase under this section until such time as the owner has owned and operated the mobile home park for a period of twelve (12) months or until the close of the fiscal year of the mobile home park, whichever occurs first.

I. Increases authorized under this section shall be based only on financial information of park operation for the twelve-month period which closed immediately prior to the date of application under this section. Losses carried over from prior years or unrealized income for prior years shall not be included in computing interest under this section, except for second year or subsequent year losses incurred as a result of rental agreements exceeding one (1) year. [Amended 4-4-83 by Ord. No. 14-83; 2-27-84 by Ord. No. 1-84]

J. Except for second year or subsequent year losses incurred as a result of rental agreements exceeding one (1) year, no rental increase may be obtained by an owner under any provision of this chapter to cover operating losses incurred in prior years resulting for the failure of the owner to either apply for or obtain rental increases or surcharges under this chapter or resulting from the owner's charging of rents under §86-18 which are insufficient to meet operational requirements and obtain a reasonable rate of return. The failure of the owner to either apply for or obtain such rental increases or surcharges within three (3) months of the close of the fiscal year in which the operating losses are incurred or in which the reasonable rate of return is not realized or the owner's charging of such insufficient rents under §86-18 during the fiscal year shall be deemed a waiver of the owner's right to such additional rents or surcharges. [Amended 2-27-84 by Ord. No. 1-84]

§86-6. Rental charges for capital improvements.

A. An owner may apply to the Rent Leveling Board for additional rental charges for the payment of the reasonable cost of major capital improvements which are necessary for the proper operation of the park upon completion of said capital improvements. A park owner may file an application to seek a determination whether proposed improvements would be subject to this section. The Board shall then review the concept of the application only and render a decision as to the applicability of the proposed capital improvement to this section. [Amended 12-27-1989 by Ord. No. 52-89]

B. For the purpose of this section, "capital improvements" shall be any item considered as such under the Federal Internal Revenue enactments and regulations. The replacement of an existing item or facility with an item or facility which has a more serviceable and useful life shall be considered a capital improvement unless the Board, in its discretion, determines that such replacement consists of normal and necessary maintenance and repairs.

C. An owner seeking additional rent for a capital improvement shall apply within six (6) months of the completion of said capital improvement for said additional rent to the Rent Leveling Board, which shall determine, after the landlord has served notice to the aforesaid tenants of a hearing date, it said improvement is a necessary major improvement and, if so, the amount of the increase granted for such major improvement, and which shall establish the term and conditions of such increase.

D. At least seven (7) days prior to the hearing by the Board on an application for additional rental charges under this section, the owner must post, in a conspicuous place in or about the mobile home park, a notice of the application setting forth the date, time and location of the hearing and setting forth the total cost of the completed capital improvement, the number of useful years of life of the improvement as established by Federal Internal Revenue guidelines using the straight-line method and as claimed by the landlord for purposes of depreciation for income tax purpose, the average cost, including debt service, of the improvement (calculated by dividing the cost of the major improvement by the total number of completed mobile home spaces in the mobile homes park) and the capital improvement increase he is seeking from each tenant.

E. Following a hearing, the Board may grant to the owner an additional rental charge under this section for a specific period of time after considering the proofs presented by the owner. If said increase is granted, it shall not be considered rental income and shall not be used in calculating allowable increases as otherwise set forth in this chapter. Any increase granted by authority of this section shall be paid over the period of the useful life of the completed capital improvement as established by Federal Internal Revenue guidelines.

F. In order to provide the Rent Leveling Board with sufficient time to review the required financial data and schedule a hearing, it is required that an applicant submit an application for additional rental charges under this section at least ninety (90) days

prior to the effective date of the proposed additional rental charges.

G. Where a proposed major capital improvement exceeds fifty thousand dollars ($50,000.) in cost and said capital improvement is not required by any law, ordinance or regulation, the tenants may disapprove the making of such capital improvement by a simple majority of those tenants who actually vote on such proposal on the basis of one (1) vote per occupied mobile home, all tenants having been given an opportunity to vote thereon.

H. The cost of expanding or enlarging the mobile home park or a section thereof shall not be borne by the tenants or utilized in computing additional rental charges under this section.

§86-7. Notice to tenants of application for rental increase or charge. [Amended 2-27-84 by Ord. No. 1-84]

In connection with any application for rental increases or charges under §§86-5 and 86-6 and for the information of the tenants, the owner of the mobile home park shall serve on each individual tenant, within thirty (30) days of the filing of such application, a summary of the basis for the rental increase, a statement of the amount of the proposed increase and its effective date and a statement breaking down the existing and proposed rent among property taxes, license fees, tax surcharges, if any, capital improvement charges, if any, operating expenses and return from property totaling the amount of rent currently paid and proposed to be paid by the tenant. In addition, as to applications filed under §86-6 of this chapter, the notice shall include the information required

by §86-6D. Said notice shall be served on individual tenants by regular mail in accordance with the definition of "service" set forth in §86-1.

§86-8. Financial information and statements. [Amended 4-4-83 by Ord. No. 14-83]

A. In any matter considered by the Rent Leveling Board under §§86-5 and 86-6, the owner of a mobile home park shall be required to submit the following financial information and statements:

(1) Statement of financial condition.

(2) Statement of operations (income and expense statements).

(3) Statement of retained earnings.

(4) Statement of changes in financial position.

(5) Such other financial data and information as may be required by the Board.

B. The financial statements, data and information which is required to be submitted shall be based upon financial data and information which is sworn to and verified by the park owner who has actual knowledge of the income, expenses and operations of the park, and in the case of applications under §86-5, all such financial statements shall be certified and audited. Said financial statements shall be prepared, itemized, audited and signed by a certified public accountant licensed by the State of New Jersey, Division of Consumer Affairs, and such statements will be sworn as to their accuracy to the best of his or her knowledge. Each financial statement, or other financial data, shall be accompanied by a written statement exe-

cuted by the certified or licensed public accountant indicating that he or she has examined and reviewed the financial data and information, that they are true, accurate and correct, and that they reflect the actual financial condition of the park for the period shown. Any person who willfully and intentionally submits or supplies false figures, makes gross misrepresentations or misstates such actual facts or material required by this chapter to obtain any rental increase whatsoever shall be considered acting to defraud such tenants.

§86-9. Tax surcharge. [Amended 3-22-82 by Ord. No. 14-82; 12-27-82 by Ord. No. 58-82]

An owner shall be entitled to a tax surcharge based upon an increase in municipal property taxes for the mobile home park. The tax surcharge shall be equivalent to the increment of the current year's taxes over the preceding year's taxes divided by the total number of tenants residing in the mobile home park as of August 1 of the current year. In addition, the previous year's total taxes charged per tenant shall be recalculated when there is a change in the total number of tenants in order to reflect the adjusted pro rata charge of real estate taxes to each tenant for the prior year's taxes. The sum of the current year's surcharge per tenant plus the adjusted pro rata charge of real estate taxes for the prior years shall be the total real estate charge to be assessed to each tenant. In no event may the total taxes paid by the tenants to the landlord exceed the total real estate taxes assessed. Any owner seeking a tax surcharge shall file with the Rent Control Board and shall serve the tenants with a notice of such surcharge at least thirty (30) days prior to the date on which said surcharge is to be effective. Said notice

shall contain the calculations involved and shall be on a form approved by the Rent Leveling Board. Said tax surcharge shall be paid in equal monthly installments over a period not to exceed twelve (12) months. A tax surcharge for a succeeding year shall not commence until the completion of the payment of the tax surcharge for the preceding year. The tax surcharge shall not be considered as a rent for purposes of computing annual rental increases under §86-4.

§86-9.1. (Reserved)[1]

§86-10. Decreases in taxes or fees.

In the event of a reduction or decrease in annual property taxes or a decrease in licensing or regulatory fees, the owner of a mobile home park shall pass on such decrease by dividing said decrease by the number of mobile home rental spaces in order to obtain an annual decrease per space, which shall be passed to the tenant in the form of a monthly rental reduction.

§86-11. Rental decrease for violations.

Where a mobile home park or any part thereof is being operated in violation of municipal codes and where such violation adversely affects habitability, any affected tenant or tenants may apply to the Board for a reasonable reduction in rent, commensurate with any such effect on habitability. Upon receipt of such application, the Board shall schedule the matter for a hearing and notify

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[1]Editor's Note: Former §86-9.1, Mandated expense surcharge, which was added 4-4-1983 by Ord. No. 14-83, was repealed 12-12-1989 by Ord. No. 52-89.

the owner thereof. If, as a result of such a hearing, the Board determines that a violation of a municipal code exists and that such violation affects habitability, it may grant a reasonable reduction in rent to the affected tenant or tenants, which rent shall remain in effect until the owner corrects said violation or violations.

§86-12. Tax appeals.

A. In the event that a municipal property tax appeal is taken by the owner and the owner is successful in said appeal and the taxes are reduced, the tenants involved shall receive fifty percent (50%) of said reduction after the owner's costs of securing said tax reduction have been deducted. The owner shall receive the remaining benefits of the tax reduction. Thereafter, in succeeding years, the benefit of such successful tax appeal shall be divided evenly between the tenants and the owner.

B. Any such successful owner shall serve the tenants, within thirty (30) days after receipt of the judgment, with a notice of the calculations involved, including an itemization of the costs of securing a reduction and the reduction each tenant is entitled to, determined by dividing one-half (½) of the remainder of the amount of said tax reduction by the number of completed mobile home spaces in the mobile home parks.

§86-13. Rent Leveling Board. [Amended 2-27-84 by Ord. No. 1-84]

There is hereby created a Mobile Home Park Rent Leveling Board within the Township of Jackson. Said Board shall consist of five (5) members and one (1)

alternate member who shall serve in the event of absence or disqualification of a regular member. The members of the Board and the alternate member shall be appointed by the governing body, and their terms of office shall be for a period of three (3) years each, commencing on January 1 of the year in which they are appointed, except that the terms of members first appointed shall be two (2) members for three (3) years, two (2) members for two (2) years, and one (1) member and the alternate member for one (1) year. Each member and the alternate shall serve without compensation and each shall be a resident of the township. No owner, operator or manager of a mobile home park or any other residential rental property or their employees and no tenant of any mobile home park or other residential property shall be appointed as a member or alternate member of the Board.

§86-14. Powers and duties of Board.

A. The Mobile Home Park Rent Leveling Board is hereby granted and shall have and exercise, in addition to other powers herein granted, all of the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the following:

(1) To issue and promulgate such rules and regulations as it deems necessary to implement the purposes of this chapter, which rules and regulations shall have the force of law until revised, repealed or amended from time to time by the Board in the exercise of its discretion, provided that such rules are filed with the Township Clerk.

(2) To supply information and assistance to owners and tenants to aid them in complying with the provisions of this chapter.

(3) To hold hearings and adjudicate applications from owners for additional rental as herein provided.

(4) To hold hearings and adjudicate applications from tenants for reduced rental as herein provided.

B. Said Board shall give both owners and tenant reasonable opportunity to be heard before making any determination and shall base its determination on the relevant credible evidence before it.

C. The Rent Leveling Board shall be required to hold all necessary public hearings and make a determination on any application under §§86-5, 86-6 and 86-11 within sixty (60) days of the filing of a completed application by any applicant unless such applicant consents in writing to the extension of the sixty-day time period for an additional period. [Amended 4-4-83 by Ord. No. 14-83]

D. The Rent Leveling Board shall review all notices for rental increases under §86-4 for surcharges under §§86-9 and 86-9.1 for tax reductions under §§86-10 and 86-12 and for negotiated settlements under §86-18C for completeness and accuracy within forty-five (45) days of the date of filing thereof. In the event that the Board finds that the notices of computations are incomplete, inaccurate or erroneous it may make such order as it deems necessary and proper to correct such notices or to correct the rental increase, surcharge or reduction to the proper amount of the proper effective date.

The effect of the rental increase, surcharge or reduction or negotiated settlement shall not be stayed by this procedure, but shall be effective in accordance with its original terms until such time as it is corrected by the duly adopted order of the Board. [Amended 4-4-83 by Ord. No. 14-83]

E. The Board shall keep and maintain minutes of its hearings and meetings. The Board shall provide for the stenographic or electronic recording of its hearings. The Board shall be required to specify those facts and reasons upon which it bases any decision.

F. No application for a rental increase of any type shall be considered by the Board unless such application and all necessary supplementary material is filed at least ten (10) days prior to a regularly scheduled meeting of the Board. [Added 4-4-83 by Ord. No. 14-83]

G. The Board shall meet twice per month. In the event that there are no pending applications, the Board Chairman shall cancel a scheduled meeting and shall provide public notice of such cancellation. [Added 2-27-84 by Ord. No. 1-84]

§86-14.1. Prehearing conferences. [Added 2-27-84 by Ord. No. 1-84]

There shall be a prehearing conference in all matters involving a rental increase under §86-5 or rental decreases, unless the Board accountant determines that such a conference is unnecessary or not required. The following procedures and requirements shall apply in the event that a prehearing conference is held:

A. The Board's Secretary shall give notice to the applicant of the date scheduled for the prehearing conference at least fourteen (14) days prior to the date thereof, and the applicant shall be required to post at a conspicuous location within the mobile home park a notice of the schedule of said prehearing conference at least ten (10) days prior to the date hereof.

B. The prehearing conference shall be attended by one (1) or more members of the Rent Leveling Board, by the accountant for the Board, by the applicant, or his representative, and by the accountant for the applicant. Tenants or representatives of the tenants who will be affected by any rental increase, including the tenant's accountant, shall be permitted to attend and participate.

C. The purpose of the prehearing conference shall be to informally review the financial data and information upon which the application is based in an effort to narrow the issues to be brought before the Board. For this purpose, the parties are urged to stipulate such facts, financial data and information as is not in dispute.

D. The Board, its representatives or the Board accountant may require the applicant to submit additional data and information as a result of the prehearing review of the financial data. In addition, the Board may require an applicant to respond to additional inquiries which may be raised at the prehearing conference for the purpose of clarifying the application.

E. At the conclusion of the prehearing conference, or within ten (10) days thereafter, the accountant

for the Board shall submit to the Board all matters stipulated between the parties, all facts and information which have been established as a result of the prehearing conference and shall further provide to the Board said Board accountant's professional review and recommendations as to any matters which may be at issue before the Board. These recommendations shall be considered by the Board in its review of the application but shall not be binding.

§86-15. Appeal procedure.

A. Any owner or tenant who is or may be affected by any action of the Rent Leveling Board may appeal the final decision or order of said Board to the Township Committee. Such appeals shall be made by filing a notice of appeal within ten (10) days of the date of the decision or order of the Rent Leveling Board, which notice of appeal shall specify the grounds thereof and the name and address of the appellant or his attorney. In the event that such appeal is filed by the owner, the owner must mail to the tenants a copy of the notice of the appeal. In the event that the appeal is filed by a tenant, the tenant shall be required to mail to the owner a copy of the notice of appeal within seven (7) days of the filing thereof with the Township Clerk.

B. Such appeal shall be decided by the Township Committee only upon the record established before the Rent Leveling Board, and it shall be the obligation of the person filing the appeal to provide a verbatim transcript of the proceedings or the official minutes of the proceedings (or an

agreed-to statement of proceedings in lieu of a transcript or minutes) before the Rent Leveling Board within fifteen (15) days of the date of filing the appeal to the Township Committee, unless extended by the Township Committee for good cause.

C. The Township Committee shall take final action on the appeal within fifteen (15) days of its receipt of the complete transcript (or statement) of proceedings before the Rent Leveling Board. In its discretion, the Township Committee may affirm, modify or reverse the decision or order of the Board, or take such other action as it may deem appropriate. In the event that the Township Committee determines that it will modify or reverse a decision or order of the Rent Leveling Board, it shall be required to specify those facts and reasons upon which it bases its modification or reversal, and it shall deliver a written statement of the reasons for its modification or reversal both to the Rent Leveling Board and to the appellant within seven (7) days of the adoption of such reasons.

D. In the event that the Township Committee takes no action on the appeal from the decision or order of the Rent Leveling Board within fifteen (15) days of the date of delivery to the Township Clerk of the complete transcript or statement or proceedings before the Rent Leveling Board, the action taken by the Rent Leveling Board shall be deemed to be affirmed by the Township Committee.

E. The filing of an appeal with the Township Committee shall not stay the effect of any decision or order of the Rent Leveling Board; provided, how-

ever, that any rents or other increases collected during the pendency of an appeal with the Township Committee shall be deposited by the owner in an interest-bearing escrow account, and such rent or other increase shall be refunded by the owner with interest in the event that the increase is modified or reversed.

§86-16. Maintenance of standards.

During the term of this chapter, the owner shall maintain the same facilities and the same standards of service, maintenance and equipment in the mobile home park and rental space as he provided or was required to do so by law, or by lease at the date the lease was entered into.

§86-17. Rental increases prohibited; exception.

No owner shall, after the effective date of this chapter, charge any rents in excess of what he was receiving at the effective date of this chapter, except for increases as authorized by this chapter.

§86-18. Exceptions.

A. The owner of a newly constructed mobile home rental space or of a mobile home rental space being rented for the first time or being rented as a result of the vacating of the mobile home rental space by a previous tenant by the removal by that tenant of his mobile home shall not be restricted in the rental he charges. Any subsequent rental increases to the tenant who takes possession, however, shall be subject to the provisions of this chapter. Where there is a resale of a mobile home remaining in the same rental space, the provisions

of this chapter restricting rental increases shall continue to apply.

B. (Reserved)[1]

C. (Reserved)[2]

D. The rent of any rental space governed by this chapter and occupied by a tenant whose rent is subsidized by a governmental program such as the Department of Housing and Urban Development, Section 8, Housing Program, may be increased once a year in excess of the annual increases permitted by §86-4 herein without applying to the Rent Leveling Board, provided that the increase is permissable under the rules and regulations of the government subsidy program and the tenant's share of the rent is not increased at a greater percentage than would be permitted by this chapter. Should the rent of the existing tenant cease to be subsidized or should the mobile home be subsequently occupied by a new tenant whose rent is not subsidized, the rent for the rental space shall be immediately reinstated to an amount that would have been permitted if this subsection did not govern. [Added 3-22-82 by Ord. No. 9-82]

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[1]Editor's Note: Former Subsection B, which dealt with agreements for rents in excess of those permitted by this chapter, which was added 5-7-1984 by Ord. No. 20-84, was repealed 12-27-1989 by Ord. No. 52-89.

[2]Editor's Note: Former Subsection C, which provided for a negotiated settlement by a majority vote of the tenants, was repealed 11-19-84 by Ord. No. 49-84.

§86-19. Additional rent increases. [Amended 4-44-83 by Ord. No. 14-83]

Only one (1) rental increase of any type shall be permitted in any twelve-month period. This provision shall not only apply to surcharges authorized by §86-9, but to rental increases authorized by §86-19 or to interim increases obtained during the pendency of an application for a rental increase under any section of this chapter, provided that any such increase shall be reduced by the amount of the interim increase, and the interim increase shall be deemed to be an initial installment on any such increase.

§86-19.1. Payment of taxes and fees prior to increases. [Added 3-8-82 by Ord. No. 5-82]

No annual increase under §86-4, no rental increase under §86-5 and no rent charge for capital improvements under §86-6 shall be applied for, considered or approved by the Rent Leveling Board or received by the owner or operator of a mobile home park until all real property taxes and license fees for the current year are paid in full. No tax surcharge under §86-9 shall be approved by the Rent Leveling Board or received by the owner or operator of a mobile home park until all real property taxes, except that portion of the taxes which are the subject of the tax surcharge, and all license fees are paid in full for the current year.

§86-19.2. Recalculation of charges. [Added 5-7-84 by Ord. No. 20-84]

Whenever an owner seeks an increase in either the monthly rental or other payments from the tenants under

any of the provisions of §86-4, 86-5, 86-6, 86-9 or 86-9.1 and there has been an increase in the total number of tenants, the owner shall be obligated to recalculate each tenant's pro rata share of license fees, taxes, tax surcharge, mandated expense surcharge or other fixed expense which is passed through to the tenants. No rental increase under any of the aforementioned sections shall be effective unless such recalculation has been made by the owner and the monthly rental has been adjusted accordingly.

§86-20. Violations and penalties.

A willful violation of any of the provisions of this chapter, including but not limited to the willful filing with the Mobile Home Park Rent Leveling Board of any material misstatement of fact, shall be punishable by a fine of not more than five hundred dollars ($500.) or by imprisonment for not more than ninety (90) days, or both. A violation affecting more than one (1) rental space shall be considered a separate violation as to each rental space.

§86-21. Legislative intent; construal.

This chapter, being necessary for the welfare to the township and its inhabitants, shall be liberally construed to effectuate the purposes thereof.

APPENDIX K

ORDINANCE 01-89

AMENDING ZONING CODE RE:
MOBILE HOME PARK ZONES.
(Township Clerk Read by Title.)

PUBLIC HEARING OPENED:

Howard Gill, 60 Alissa Terrace: Submitted input data in writing regarding the posted ordinance. Feels adoption of this ordinance is within the purview of the Mt. Laurel legislation. Noted that mobile home parks advertise the benefits of mobile home living as a long term investment as opposed to payment of rent. Supports the concept of a specific zone for the parks. Without this specific designation, catastrophic losses could occur, such as dislocation of residents. Urging the adoption of this proposed ordinance.

Dora Karker, Jackson Estates: Is sure that every mobile home owner is 100% behind this ordinance.

Lucas Krom: Would appreciate passage of this ordinance as well.

PUBLIC HEARING CLOSED: Carlson/Yalden
ROLL CALL: Unanimous IN FAVOR

ADOPTION: Motion to adopt Ordinance 01-89 on second reading, advertise notice of Passage and Approval as required by law: CONWAY/Carlson

ROLL CALL: YES: BORYS, CONWAY, YALDEN, CARLSON, COTTRELL.

ORDINANCE 01-89

AN ORDINANCE AMENDING AN SUPPLEMENTING CHAPTER 109 "ZONING CODE OF THE TOWNSHIP OF JACKSON, NEW JERSEY."

BE IT ORDAINED, by the Township Committee of the Township of Jackson, County of Ocean, State of New Jersey, as follows:

SECTION 1. Chapter 109 Zoning of the "Code of the Township of Jackson, New Jersey" is hereby amended and supplemented to add Article XXIII, entitled MHP-Mobile Home Parks to read as follows:

ARTICLE XXIII
MHP-MOBILE HOME PARKS

109-116 Permitted Uses.

(A) Mobile Homes occupied for dwelling purposes.

(B) Recreation, cultural, and medical facilities for the sole use of residents of the community and their guests, including but not limited to the following:

(1) Lake.

(2) Clubhouse.

(3) Picnic Grounds.

(4) Shuffleboard court.

(5) Horseshoe court.

(C) Essential services.

109-116.1 Required accessory uses.

(A) Off-street parking subject to the provisions of Section 101-8.20.

109-116.2 Permitted accessory uses.

(A) Necessary accessory buildings and uses, including facilities for maintenance, administration, streets and off-street parking facilities.

109-116.3 Conditional uses subject to the provisions of this Chapter.

(A) Public utilities.

(B) Community residences for the developmentally disabled.

109-116.4 Area, yard, and building requirements. No building, structure, or land shall be used or erected, altered, enlarged or maintained except for a mobile home park within the area which is in accordance with a site development plan approved by the Planning Board. Such site development plan shall meet at least the following minimum requirements:

(A) Minimum park area: The minimum area for a mobile home park shall be ten (10) acres, provided that an area of less than ten (10) acres may be added to an existing mobile home park if contiguous thereto and in compliance with the provisions of this chapter.

(B) Minimum mobile home space area: twenty-eight hundred (2800 s.f.) square feet.

(C) Minimum space width: thirty-five (35') feet.

(D) Minimum clearance between units: twenty four (24') feet.

(E) Minimum distance of unit from dwelling: fifty (50') feet.

(F) Minimum distance of unit from property line: ten (10') feet.

(G) Minimum distance of unit from public right of way one hundred (100') feet.

(H) Minimum side and read buffer: ten (10') feet.

(I) Off-street parking: At least the following number of off-street parking spaces shall be provided: two (2) spaces for each mobile home space. Off-street parking for any other purposes shall be in accordance with Section 101-8.20.

(J) Water and sewer facilities. No individual wells or individual sewage disposal systems shall be permitted, and each building shall be serviced with said utilities by a central supply or disposal system which is approved by the Township Board of Health, Sewage Authority and other controlling agencies. No building permit shall be issued unless and until plans for such facilities have been submitted to the proper authorities for approval and adequate provisions are made to ensure that such necessary facilities shall be installed.

(K) Roadways, streams, lakes, parking areas, driveways, sidewalks, and walkways. The developer shall provide for the ownership and maintenance of all roadways, streams, lakes, parking areas, driveways, sidewalks and walkways. Such responsibility shall remain with the developer, except that it may be transferred to an organization conceived and established to own and maintain the roadways, streams, lakes, parking areas, driveways, sidewalks, and walkways for the benefit of such development.

(L) All residential mobile home spaces shall front on private roadways in accordance with a site development plan and subdivision plat approval by

the Jackson Township Planning Board. The requirement of Section 101-5.4A shall not be applicable within this zone.

(M) Recreation areas: At least two hundred fifty (250 s.f.) square feet per each mobile home space shall be made available in one (1) or more areas for recreation uses. These areas shall be located so as to be free of traffic hazards.

SECTION 2. Zoning Map: Boundaries Chapter 109-4 and 109-5 is hereby amended as follows:

Name, Block & Lot	*Presently Zoned*	*To Be Zoned*
1. JACKSON ESTATES MOBILE HOME PARK B32.02, L.4	PV	MHP-MOBILE HOME PARKS
2. SOUTHWIND MOBILE HOME PARK B 82.01, L 41 & 43	R40	MHP-MOBILE HOME PARKS
3. FOUNTAINHEAD MOBILE HOME PARK B. 111, L. 39	R-40	MHP-MOBILE HOME PARKS
4. MAPLE GLEN MOBILE HOME PARK B 32.01, L 12.01 & 12.02	PV	MHP-MOBILE HOME PARKS
5. OAK TREE MOBILE HOME PARK B 99.01 L 40.01 & 41	R-20	MHP-MOBILE HOME PARKS

Name, Block & Lot	*Presently Zoned*	*To Be Zoned*
6. SHADY OAK MOBILE HOME PARK B 30, L 5&7	RD	MHP-MOBILE HOME PARKS
7. SHADY LAKE MOBILE HOME PARK B 111, L 1.03	B-3	MHP-MOBILE HOME PARKS
8. LAND O'PINES MOBILE HOME PARK B. 102.03, L 1&4 thru 9	B-3	MHP-MOBILE HOME PARKS
9. LUXURY MOBILE HOME PARK B 29, L. 11 & 12	RD	MHP-MOBILE HOME PARKS

SECTION 3. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

SECTION 4. If any section, subparagraph, sentence, clause, or phrase of this ordinance shall be held to be invalid, such decisions shall not invalidate the remaining portion of this Ordinance.

SECTION 5. This Ordinance shall take effect upon final adoption and publication pursuant to law.

SECTION 6. A copy of this proposed ordinance together with a notice of hearing shall be forwarded by the Office of the Township Clerk by certified mail return receipt requested upon the Ocean County Planning Board and the Municipal Clerks in all municipalities

within two hundred (200') feet and in accordance with the Municipal Land Use Law.

NOTICE

NOTICE IS HEREBY GIVEN that the foregoing ordinance was introduced and passed on first reading at the regular meeting of the Township Committee of the Township of Jackson, in the County of Ocean, held on the 9th day of January, 1989, and was previously designated for consideration of a second reading and final passage at the regular meeting of said governing body to be held on the 13th day of February, 1989, has now been re-scheduled and will be considered for second reading and final passage at the next Regular Meeting of said governing body to be held on the 27th day of February, 1989 at 8:00 PM or as soon thereafter as this matter can be reached at the meeting room of the Municipal Building in said Township at which time all persons interested shall be given an opportunity to be so heard concerning this ordinance. Prior to second reading, a copy of this Ordinance shall be posted on the bulletin board in the Municipal Building and copies shall be posted on the bulletin board in the Municipal Building and copies shall be made available at the Township Clerk's Office in said Municipal Building to members of the general public who shall request such copies.

DAVID T. MILLER, SR., RMC, TOWNSHIP CLERK

Dated: 2/17/89

APPENDIX L

2A:18-61.6. Vacation of premises by tenant after notice; failure of owner to meet conditions of grounds stated or to advise prospective owner in writing notice was given, or obtaining eviction by use of unauthorized or illegal cause; liability for civil damages, attorney fees and costs; exemptions

a. Where a tenant vacates the premises after being given a notice alleging the owner seeks to personally occupy the premises under subsection *l.* of section 2 of P.L.1974, c. 49 (C. 2A:18-61.1) and the owner thereafter arbitrarily fails to personally occupy the premises for a total of at least six months, or arbitrarily fails to execute the contract for sale, but instead permits personal occupancy of the premises by another tenant or instead permits registration of conversion of the premises by the Department of Community Affairs pursuant to "The Planned Real Estate Development Full Disclosure Act," P.L.1977, c. 419 (C. 45:22A-21 et seq.), such owner shall be liable to the former tenant in a civil action for three times the damages plus the tenant's attorney fees and costs.

b. If an owner purchases the premises pursuant to a contract requiring the tenant to vacate in accordance with subsection *l.* of section 2 of P.L.1974, c. 49 (C.2A:18-61.1) and thereafter arbitrarily fails to personally occupy the premises for a total of at least six months, but instead permits personal occupancy of the premises by another tenant or instead permits registration of conversion of the premises by the Department of Community Affairs pursuant to P.L.1977, c. 419 (C. 45:22A-21 et seq.), such

owner-purchaser shall be liable to the former tenant in a civil action for three times the damages plus the tenant's attorney fees and costs.

c. If a tenant vacates a dwelling unit after notice has been given alleging that the owner seeks to permanently board up or demolish the premises or to retire permanently the premises from residential use pursuant to subsection g. (1) or h. of section 2 of P.L.1974, c. 49 (C. 2A:18-61.1) and instead, within five years following the date on which the dwelling unit or the premises become vacant, an owner permits residential use of the vacated premises, the owner shall be liable to the former tenant in a civil action for three times the damages plus the tenant's attorney fees and costs of suit.

An owner of any premises where notice has been given pursuant to subsection g. (1) or h. of section 2 of P.L. 1974, c. 49 (C. 2A:18-61.1), who subsequently seeks to sell, lease or convey the property to another, shall, before executing any lease, deed or contract for such conveyance, advise in writing the prospective owner that such notice was given and that the owners of the property are subject to the liabilities provided in this subsection and sections 3 and 4 of this 1986 amendatory and supplementary act.[1] Whoever fails to so advise a prospective owner prior to the execution of the contract of sale, lease or conveyance is liable to a civil penalty of not less than $2,500.00 or more than $10,000.00 for each offense, and shall also be liable in treble damages, plus attorney fees and costs of suit, for any loss or expenses incurred by a new owner of the property as a result of that failure. The civil penalty prescribed in this subsection shall be collected and enforced by summary proceedings pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). The Superior Court, Law Division, Special Civil Part, in

the county in which the rental premises are located shall have jurisdiction over such proceedings. Process shall be in the nature of a summons or warrant, and shall issue upon the complaint of the Commissioner of the Department of Community Affairs, the Attorney General, or any other person.

d. If a tenant vacates a dwelling unit after receiving from an owner an eviction notice (1) purporting to compel by law the tenant to vacate the premises for cause or purporting that if the tenant does not vacate the premises, the tenant shall be compelled by law to vacate the premises for cause; and (2) using a cause that is clearly not provided by law or using a cause that is based upon a lease clause which is contrary to law pursuant to section 6 of P.L.1975, c. 310 (C. 46:8-48); and (3) misrepresenting that, under the facts alleged, the tenant would be subject to eviction, the owner shall be liable to the former tenant in a civil action for three times the damages plus the tenant's attorney fees and costs. An owner shall not be liable under this subsection for alleging any cause for eviction which, if proven, would subject the tenant to eviction pursuant to N.J.S. 2A:18-53 et seq. or P.L.1974, c. 49 (C. 2A:18-61.1 et seq.).

In any action under this section the court shall, in addition to damages, award any other appropriate legal or equitable relief. For the purposes of P.L.1974, c. 49 (C. 2A:18-61.1 et seq.), the term "owner" includes, but is not limited to, lessee, successor owner and lessee, and other successors in interest.

e. An owner shall not be liable for damages pursuant to this section or section 6 of this 1986 amendatory and supplementary act[2] or subject to a more restrictive local ordinance adopted pursuant to section 8 of this 1986 amendatory and supplementary act[3] if:

(1) Title to the premises was transferred to that owner by means of a foreclosure sale, execution sale or bankruptcy sale; and

(2) Prior to the foreclosure sale, execution sale or bankruptcy sale, the former tenant vacated the premises after receiving eviction notice from the former owner pursuant to subsection g. (1) or h. of section 2 of P.L. 1974, c. 49 (C. 2A:18-61.1); and

(3) The former owner retains no financial interest, direct or indirect, in the premises. The term "former owner" shall include, but not be limited to, any officer or board member of a corporation which was the former owner and any holder of more than 5% equity interest in any incorporated or unincorporated business entity that was the former owner; and

(4) The former tenant is provided notice and rights in accordance with the provisions of section 6 of this 1986 amendatory and supplementary act.

L.1975, c. 311, §3, eff. Feb. 19, 1976. Amended by L.1986, c. 138, §5, eff. Oct. 29, 1986.

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[1]Sections 2A:18-61.1c and 2A:18-61.1d.

[2]Section 2A:18-61.1e.

[3]Section 2A:18-61.1f.

2A:18-61.7. Definitions

As used in this act:

a. "Comparable housing or park site" means housing that is (1) decent, safe, sanitary, and in compliance with

all local and State housing codes; (2) open to all persons regardless of race, creed, national origin, ancestry, marital status or sex; and (3) provided with facilities equivalent to that provided by the landlord in the dwelling unit or park site in which the tenant then resides in regard to each of the following: (a) apartment size including number of rooms or park site size, (b) rent range, (c) apartment's major kitchen and bathroom facilities, and (d) special facilities necessary for the handicapped or infirmed; (4) located in an area not less desirable than the area in which the tenant then resides in regard to each of the following: (a) accessibility to the tenant's place of employment, (b) accessibility of community and commercial facilities, and (c) environmental quality and conditions; and (5) in accordance with additional reasonable criteria which the tenant has requested in writing at the time of making any request under this act.

b. "Condominium" means a condominium as defined in the "Condominium Act," P.L.1969, c. 257 (C. 46:8-B-1 et seq.).

c. "Cooperative" means a housing corporation or association which entitles the holder of a shore or membership interest thereof to possess and occupy for dwelling purposes a house, apartment or other structure owned or leased by said corporation or association, or to lease or purchase a dwelling constructed or to be constructed by said corporation or association.

d. "Mobile home park" means any park, including a trailer park or camp, equipped to handle mobile homes sited on a year-round basis.

L.1975, c. 311, §4, eff. Feb. 19, 1976. Amended by L.1981, c. 8, §3, eff. Jan. 26, 1981.

2A:18-61.8. Conversion of multiple dwelling into condominium, cooperative or fee simple ownership; notice to and rights of tenants

Any owner who intends to convert a multiple dwelling as defined in P.L.1967, c. 76 (C. 55:13A-1 et seq.), other than a hotel or motel, or a mobile home park into a condominium or cooperative, or to fee simple ownership of the several dwelling units or park sites shall give the tenants 60 days' notice of his intention to convert and the full plan of the conversion prior to serving notice, provided for in section 3 of P.L.1974, c. 49 (C. 2A:18-61.2). A duplicate of the first such 60-day notice and full plan shall be transmitted to the clerk of the municipality at the same time. In the notice of intention to convert tenants shall be notified of their right to purchase ownership in the premises at a specified price in accordance with this section, and their other rights as tenants under this act in relation to the conversion of a building or park to a condominium, cooperative or fee simple ownership. A tenant in occupancy at the time of the notice of intention to convert shall have the exclusive right to purchase his unit, the shares of stock allocated thereto or the park site, as the case may be, for the first 90 days after such notice that such purchase could be made during which time the unit or site shall not be shown to a third party unless the tenant has in writing waived the right to purchase.

L.1975, c. 311, §5, eff. Feb. 19, 1976. Amended by L.1981, c. 8, §4, eff. Jan. 26, 1981.

2A:18-61.9. Notice to tenant after master deed or agreement to establish cooperative

Any owner who establishes with a person an initial tenancy after the master deed or agreement establishing the cooperative was recorded shall provide to such person at the time of applying for tenancy and at the time of establishing any rental agreement a separate written statement as follows:

"STATEMENT

THIS BUILDING (PARK) IS BEING CONVERTED TO OR IS A CONDOMINIUM OR COOPERATIVE (OR FEE SIMPLE OWNERSHIP OF THE SEVERAL DWELLING UNITS OR PARK SITES). YOUR TENANCY CAN BE TERMINATED UPON 60 DAYS' NOTICE IF YOUR APARTMENT (PARK SITE) IS SOLD TO A BUYER WHO SEEKS TO PERSONALLY OCCUPY IT. IF YOU MOVE OUT AS A RESULT OF RECEIVING SUCH A NOTICE, AND THE LANDLORD ARBITRARILY FAILS TO COMPLETE THE SALE, THE LANDLORD SHALL BE LIABLE FOR TREBLE DAMAGES AND COURT COSTS."

The parenthesized words shall be omitted or substituted for preceding words where appropriate. Such statement shall also be reproduced as the first clause in any written lease provided to such person.

L.1975, c. 311, §6, eff. Feb. 19, 1976. Amended by L.1981, c. 8, §5, eff. Jan. 26, 1981.

2A:18-61.10. Removal of tenant to allow conversion to cooperative or condominium; moving expense compensation

Any tenant receiving notice under section 3g. of P.L.1974, c. 49[1] who is not evicted for any cause under this act other than under section 3 g. shall receive from the owner moving expense compensation of waiver of payment of 1 month's rent.

L.1975, c. 311, §7, 3ff. Feb. 19, 1976.

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[1]Section 2A:18-61.2.

2A:18-61.11. Comparable housing; offer of rental; stay of eviction; alternative compensation; senior citizens and disabled protected tenancy period

a. Tenants receiving notice under section 3 g. of P.L.1974, c. 49[1] may request of the landlord within 18 full months after receipt of such notice, and the landlord shall offer to the tenant, personally or through an agent, the rental of comparable housing or park site and a reasonable opportunity to examine and rent such comparable housing or park site. In any proceeding under subsection 2 k. of P.L.1974, c. 49[2] instituted following the expiration of notice required under section 3 g. of P.L.1974, c. 49, the owner shall prove that a tenant was offered such comparable housing or park site and provided such reasonable opportunity to examine and rent such housing or park site as requested pursuant to this section. The court shall authorize 1-year stays of eviction with reasonable rent increases until such time as the court

is satisfied that the tenant has been offered comparable housing or park site and provided a reasonable opportunity to examine and rent such housing or park site as requested pursuant to this section. However, in no case shall more than five such stays be granted.

b. The court shall automatically renew any 1-year stay of eviction in any case where the landlord failed to allege to the court within 1 year of a prior stay that the tenant was offered a reasonable opportunity to examine and rent comparable housing or park site within such prior year.

c. However the court shall not authorize any further stays at any time after one such stay has been authorized when the owner has also provided a tenant with hardship relocation compensation of waiver of payment of 5 months' rent.

d. On or after the effective date of the "Senior Citizens and Disabled Protected Tenancy Act," P.L.1981, c. 226 (C. 2A:18-61.22 et seq.), notwithstanding the provisions of subsection a. of this section, where the court has jurisdiction pursuant to that subsection, whether by virtue of the authorization by the court of a stay of eviction or by virtue of any other proceedings required or instituted pursuant to P.L.1974, c. 49 (C. 2A:18-61.1 et seq.) or P.L.1975, c. 311 (C. 2A:18-61.6 et seq.), or in any action for declaratory judgment, the court may invoke some or all of the provisions of the "Senior Citizens and Disabled Protected Tenancy Act" and grant to a tenant, pursuant to that amendatory and supplementary act, a protected tenancy period upon the court's determination that:

(1) The tenant would otherwise qualify as a senior citizen tenant or disabled tenant pursuant to that amenda-

tory and supplementary act, except that the building or structure in which the dwelling unit is located was converted prior to the effective date of that amendatory and supplementary act; and

(2) The granting of the protected tenancy period as applied to the tenant, giving particular consideration to whether a unit was sold on or before the date that the amendatory and supplementary act takes effect to a bona fide individual purchaser who intended personally to occupy the unit, would not be violative of concepts of fundamental fairness or due process. Where a court declines to grant a protected tenancy status, it shall nevertheless order such hardships stays as authorized by subsections a. and b. of this section until comparable relocation housing is provided. The hardship relocation compensation alternative of subsection c. of this section shall not be applicable in this situation.

L.1975, c. 311, §8, eff. Feb. 19, 1976. Amended by L.1981, c. 8, §6, eff. Jan. 26, 1981; L.1981, c. 226, §14, eff. July 27, 1981.

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[1]Section 2A:18-61.2.

[2]Section 2A:18-61.1.

2A:18-61.12. Rules and regulations

In accordance with the "Administrative Procedure Act" (P.L.1968, c. 410, C. 52:14B-1 et seq.), the Department of Community Affairs shall adopt rules and regulations setting forth procedures required to be followed by landlords in providing tenants a reasonable opportunity to examine and rent comparable housing and setting

forth procedures and content for information required to be disclosed to tenants regarding such procedures, the rights and responsibilities of tenants under this act, and the plans and proposals of landlords which may affect any tenant in order to maximize tenants' ability to exercise rights provided under this act. Any rules and regulations adopted under this section shall only be applicable to tenants and owners of a building or mobile home park which is being, or is about to be converted from the rental market to a condominium, cooperative or to fee simple ownership of the several dwelling units or park sites, or to any mobile home park being permanently retired from the rental market.

L.1975, c. 311, §9, eff. Feb. 19, 1976. Amended by L.1981, c.8, §7, eff. Jan. 26, 1981.

2A:18-61.22. Short title

This amendatory and supplementary act shall be known and may be cited as the "Senior Citizens and Disabled Protected Tenancy Act."

L.1981, c. 226, §1, eff. July 27, 1981.

2A:18-61.23. Legislative findings and declarations

The Legislature finds that research studies have demonstrated that the forced eviction and relocation of elderly persons from their established homes and communities harm the mental and physical health of these senior citizens, and that these disruptions in the lives of older persons affect adversely the social, economic and cultural

characteristics of communities of the State, and increase the costs borne by all State citizens in providing for their public health, safety and welfare. These conditions are particularly serious in light of the rising costs of home ownership, and are of increasing concern where rental housing is converted into condominiums or cooperatives which senior citizens on fixed limited incomes cannot afford, an occurrence which is becoming more and more frequent in this State under prevailing economic circumstances. The Legislature, therefore, declares that it is in the public interest of the State to avoid the forced eviction and relocation of senior citizen tenants wherever possible, specifically in those instances where rental housing market conditions and particular financial circumstances combine to diminish the ability of senior citizens to obtain satisfactory comparable housing within their established communities, and where the eviction action is the result not of any failure of the senior citizen tenant to abide by the terms of a lease or rental agreement, but of the owner's decision advantageously to dispose of residential property through the device of conversion to a condominium or cooperative.

The Legislature further finds that it is in the public interest of the State to avoid the forced eviction and the displacement of the handicapped wherever possible because of their limited mobility and the limited number of housing units which are suitable for their needs.

The Legislature further declares that in the service of this public interest it is appropriate that qualified senior citizen tenants and disabled tenants be accorded a period of protected tenancy, during which they shall be entitled to the fair enjoyment of the dwelling unit within the converted residential structure, to continue for such time, up to 40 years, as the conditions and circumstances

which make necessary such protected tenancy shall continue.

The Legislature further finds that the promotion of this public interest is possible only if senior citizen tenants and disabled tenants are protected during this period from alterations in the terms of the tenancy or rent increases which are the result solely of an owner's decision to convert.

L.1981, c. 226, §2, eff. July 27, 1981.

NEW JERSEY ADMINISTRATIVE CODE

CHAPTER 24
CONDOMINIUM, FEE SIMPLE AND COOPERATIVE CONVERSION AND MOBILE HOME PARK RETIREMENT

5:24-1.1 Introduction

P.L. 1975, c.311, which amended and supplemented P.L. 1974, c.49 (N.J.S.A. 2A:18-61.1 through 61.12), became effective on February 19, 1976. P.L. 1981, c.8, which amended P.L. 1974, c. 49 and P.L. 1975, c.311 so as to extend certain protections to owners of mobile homes in mobile home parks being permanently retired from the rental market, became effective January 26, 1981. The rules contained in this subchapter have been adopted to enable the Department of Community Affairs (DCA) to implement these laws and to assist owners and tenants of properties affected by them in complying

with, and realizing the protection provided by, their requirements.

5:24-1.2 Procedures; definitions

(a) When an owner seeks to convert a building from the rental market to a condominium or a cooperative or fee simple ownership of two or more dwelling units, or to covert a mobile home park from the rental market to a condominium or cooperative or fee simple ownership of two or more units or park sites, or to retire a mobile home park permanently from the rental market, there are several procedures required to be followed pursuant to N.J.S.A. 2A:18-61.6 through 61.12.

5:24-1.6 Rights of tenants and mobile home owners in occupancy

(a) Tenants in occupancy prior to the recording of the master deed, deed establishing a fee simple lot or deed transferring the property to a cooperative corporation or association who have received the three year notice of eviction on the grounds of conversion, or mobile home owners who have received the 18 month notice of eviction on the grounds of permanent retirement of the mobile home park from the rental market, have the right, for 18 full months after the receipt of such notice, to request of the landlord, and to be offered by the landlord, personally or through an agent, a reasonable opportunity to examine and rent "comparable housing," as defined in N.J.A.C. 5:24-1.2.

(b) In order to be deemed to have offered a tenant or a mobile home owner a reasonable opportunity to

examine and rent comparable housing, a landlord, or a person clearly authorized by a letter to the tenant or mobile home owner to be the landlord's agent, must offer a comparable rental unit or mobile home park site fulfilling the definition of "comparable housing" set forth in N.J.A.C. 5:24-1.2. An offer of comparable housing must include the following elements:

1. The offer must be made with reasonable notice in order to give the tenant or mobile home owner a fair opportunity to examine and rent the unit or mobile home park site. Reasonable notice must be given to the tenant or mobile home owner by personal service or certified mail no less than 72 hours in advance, exclusive of legal holidays, of the opportunity to examine comparable housing;

2. If the landlord of the proposed comparable unit or mobile home park site should reject the application of any tenant or mobile home owner for each comparable housing, the offer shall not be construed as an offer of comparable housing as required in these rules; and

3. In no case shall a comparable rental unit or mobile home park site be deemed to have been offered if it was not available to be rented to the tenant or mobile home owner.

5:24-1.7 Evictions

(a) In order to evict for conversion from the rental market to a condominium, cooperative or fee simple ownership of two or more dwelling units or park sites at the end of the three year notice period, or in order to evict for permanent retirement of a mobile home park from the rental market and the end of the 18 month

notice period, the landlord must prove in court that the tenant or mobile home owner was offered comparable housing as requested and as defined in N.J.A.C. 5:24-1.2 and reasonable opportunity to examine and rent such housing, as described in N.J.A.C. 5:24-1.6(b).

(b) The court has authority under P.L. 1975, c.311, as amended, to authorize one-year stays of eviction with reasonable rent increases until the court is satisfied that the tenant or mobile home owner has been offered comparable housing and a reasonable opportunity to examine and rent such housing.

(c) If, after at least one one-year stay has been authorized, the landlord provides the tenant or mobile home owner with a "hardship relocation compensation," which shall consist of a waiver of payment of five months' rent, and has demonstrated this to the court, then the court cannot authorize any further stays. A warrant for possession could then issue at the end of the one-year stay.

(d) If the landlord does not provide the relocation compensation of five months' rent and fails, within one year of a prior stay, to allege to the court that the tenant was offered a reasonable opportunity to examine and rent comparable housing, the court shall automatically renew the one-year stay.

(e) The court can grant up to five one-year stays if evidence is not provided to the court of a reasonable opportunity to examine and rent comparable housing or of the payment of a hardship relocation compensation of waiver of payment of five months' rent.

5:24-1.8 Moving expense compensation

Any tenant whose tenancy began before the conversion, and is not evicted on grounds other than that of a conversion, and any mobile home owner who is not being evicted on grounds other than permanent retirement of the mobile home park from the rental market, shall receive from the landlord a moving expense compensation of a waiver of payment of one month's rent. No warrant of possession can be given until payment of one month's waiver has been proved. Even if tenants or mobile home owners leave without eviction proceedings, they are entitled to the waiver of payment of one month's rent. Nothing in this section in any way waives the rights of other parties under the security deposit law.

Supreme Court, U.S.
FILED
AUG 27 1993
OFFICE OF THE CLERK

No. 93-137

In The

Supreme Court of the United States

October Term, 1993

MOBILE HOME VILLAGE, INC., a Corporation of the State of New Jersey, t/a SOUTH WIND VILLAGE,

Petitioner,

vs.

MAYOR AND COUNCIL OF THE TOWNSHIP OF JACKSON, THE JACKSON TOWNSHIP RENT CONTROL BOARD, and THE ESTATE OF KURT H. AND SOPHIE BIELEFELOT,

Respondents.

On Petition for a Writ of Certiorari to the Appellate Division of the Superior Court of the State of New Jersey

BRIEF IN OPPOSITION FOR RESPONDENTS MAYOR AND COUNCIL OF THE TOWNSHIP OF JACKSON AND THE JACKSON TOWNSHIP RENT CONTROL BOARD

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QUESTIONS PRESENTED

The two issues presented by Mobile Home Village, Inc. for review by this Court on Writ of Certiorari are inappropriate under the standards set out in Rule 10 of the Supreme Court Rules. The first issue is of no distinction since the holding of *Yee v. City of Escondido*, 503 U.S. __ 112, S. Ct. 1522 (1992), is directly applicable to this matter and resolves all issues. The second question is also inappropriate inasmuch as the Appellate Division of the State of New Jersey correctly found that the exhaustion doctrine was particularly applicable to the facts of this case under New Jersey Law.

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STATEMENT OF THE CASE

The Petitioner attempts to distinguish this case from *Yee v.*

City of Escondido, 503 U.S. __ 112, S. Ct. 1522 (1992) by asserting that under *Yee*, a cause of action may rise since Petitioner's land is zoned exclusively for mobile home parks.

The Petitioner's argue that the zoning ordinance is the mechanism which forces a landlord to continue use of his land by the tenants. They argue that this distinguishes the present case from that set forth in *Yee*.

Despite the fact of the presence of relief under the New Jersey Municipal Land Use Law from this zoning by application for "use variance", the Petitioner simply concludes it would be futile to apply for such variance. The Appellate Division found that there was no attempt by Petitioners to seek a change in the use of the property or that they even contemplated for economic reasons a change in the use of the land. Accordingly, no taking has occurred under the standards set forth in *Yee*. The Petitioner however, in blatantly conclusatory language, repeatedly asserts that to explore their remedies or exhaust their administrative appeals by filing for a variance would be futile. They also claim that the other New Jersey Statutes would also render their appeal futile.

There are simply no facts appearing in this record on which to base this conclusion.

The Jackson Township Rent Ordinance (Appendix J) has been reviewed by many courts including this Court and has been found to pass constitutional muster. *See, Joe Mayes v. Jackson Township*, 103 N.J. 362, 511 A.2d 589 (1986), *cert. denied*, 497 U.S. 1090, 107 S. Ct. 1300, 94 L. Ed. 2d 155 (1987).

The Jackson Township Rent Control Ordinance provides for a just and reasonable rate of return on the investment of the park owner.

To the best of the knowledge of the Township of Jackson, Southwind Mobile Home Park, owned by the Petitioner, has a history of being a viable economic entity and operation. The Township of Jackson is unaware of any action of the Petitioner to sell the park or change the use of the property. No application to the Jackson Township Zoning Board of Adjustment for a change in use or other relief from the zoning requirements has been filed by the Petitioner. In its decision, the Appellate Division reviewed *Yee* and found that the *Yee* case involved similar issues as to the combined effect of the California Mobile Home Residency Law and the City of Escondido's Municipal Rent Control Ordinance. (Appendix B, 8a).

The Appellate Division adopted the language of *Yee* and found that a physical taking, as opposed to a regulatory taking, exists only where the government "requires the landlord to submit to the physical occupation of his land" and accordingly absent that coercion, the Petitioner's argument was rejected by the Appellate Division. (Appendix B, 9a-11a).

Finally, the Appellate Division concluded that the argument by Petitioner to distinguish this case from *Yee* based on zoning requirements was rejected by the Court as follows:

> We decline to consider the merits of Plaintiff's argument. Plaintiff has not demonstrated any attempt to change the use of its land. See N.J.S.A. 40:55D-70D. We conclude that it would be wholly speculative to determine whether the untested circumstances require Plaintiff to perpetually use its property as a mobile home park. Even though Plaintiff might have difficulty changing the use of its property, the statutes and ordinance do not on their face

> preclude Plaintiff from discontinuing use of the land as a mobile home park.

(Appendix B, 13a).

It is respectfully submitted that the Appellate Division correctly characterized the status of the case and the failure of the Petitioner to draw any concrete distinction between the facts of this case and that set forth in *Yee*.

REASONS FOR DENYING THE WRIT

Any question regarding the relationship between the facts of this matter and those set forth in *Yee* were explained and disposed of by the Appellate Division of the State of New Jersey. The New Jersey Supreme Court refused to grant certification to further consider these arguments raised at the Appellate Division level.

There is simply no federal question or undecided issue with regard to the "exhaustion doctrine" as it applies to zoning relief in the State of New Jersey.

In cases where an ordinance is found to violate a constitutionally protected right on its face, injured parties may be entitled to damages and civil right suits under 42 U.S.C. § 1983. *See, Burlington Assembly of God v. Zoning Board,* 238 N.J. Super. 634 (Law Div. 1989). In this instance, the zoning ordinance is not alleged to be unconstitutional by the Petitioner; accordingly, the trial courts shoud ordinarily decline to adjudicate an attack on the ordinance until the owner has exhausted his variance remedy. *See, Deal Gardens, Inc. v. Board of Trustees of Loch Arbour,* 48 N.J. 492, 496-498 (1967), *Route 15 Associates v. Jefferson Township,* 187 N.J. Super. 481, 488-489 (App. Div. 1992). In this case, the Plaintiff is asserting that the zoning ordinance in combination with the Township of Jackson's rent control ordinance and various state

statutes work a taking. However, before such an argument could be presented, there must be an application or measure by the Petitioner to seek relief from the zoning restrictions prior to any claim for damages being actionable.

There are no outstanding or unresolved issues of law concerning physical taking aspects of mobile home rent control ordinances after *Yee*. Further, the exhaustion doctrine as it applies to variances or relief from zoning laws is well settled case law.

Accordingly, there are no special or important reasons as set forth under Rule 10 for granting this Writ of Certiorari.

I.

THE APPELLATE DIVISION OF THE NEW JERSEY SUPERIOR COURT PROPERLY APPLIED THE PRECEDENCE OF THE FEDERAL SUPREME COURT DECISIONS IN FINDING THAT THE PETITIONER HAD NOT SUFFERED A PHYSICAL TAKING ON THE BASIS OF STATE LAW AND LOCAL RENT CONTROL ZONING ORDINANCES.

It is clear from the Appellate Division's thoughtful analysis that these regulations do not add up to a taking and do not present any distinguishing circumstances from that set forth in *Yee*. The Petitioner asserts that this is the "different case" of which Justice O'Connor spoke in *Yee*.

> A different case would be presented where the statute, on its face or as applied, to compel a land owner over objection to rent his property or to refrain in perpetuity from terminating a tenancy.

Yee, 503 U.S. at __ 112, S. Ct. at 1528-1529.

The record is clear that the Petitioner has operated a mobile home park for many years and there are no facts to support a claim that they wish to change the use of the premises. Rather they assert via some abstract intellectual exercise that a taking has taken place in accordance with Justice O'Connor's language in *Yee*. This argument falls after a thorough review of the facts and the law as it now stands.

The Appellate Division correctly characterized and found without merit the Petitioner's argument that they must be excused from this exhaustion requirement because they obviously would not receive a variance. The exhaustion doctrine is a rule of substance that requires a party to seek relief from government regulation before filing for relief with the courts. (Appendix B, 13a).

In this case there is no "required acquiescence" to utilize Petitioner's property as a mobile home park. The park is apparently viable and the Petitioners are operating in accordance with state and local regulations. Notwithstanding the foregoing, the Petitioner argues that this is a different situation than *Yee*. At best their argument can be characterized as claiming a "distinction without difference". The State of California and the State of New Jersey have similar regulatory schemes as it affects rent control and zoning for land use. The Petitioner is guilty of the most gross speculation in claiming that an application for a change in use is an exercise in futility. New Jersey Case Law demonstrates that the exhaustion doctrine is there to protect judicial time and resources where there is no case or controversy. *Twenty-First Century v. D'Alessandro*, 257 N.J. Super. 320 (App. Div. 1992). Petitioner's specious reasoning further goes on to assert that they can only speculate on what type of use the property could be directed to. Presumably, the Petitioner, who is the owner of the property would

know or have a good idea as to what the highest and best use of the property would be. In any event, the Municipal Land Use Law has been interpreted by the highest court of the state and there has been thorough discussions involving the standards which must be met prior to the issuance of a use variance. *See, Burbridge v. Minehill Township,* 117 N.J. 376, 386-387 (1990) where the New Jersey Supreme Court thoroughly discussed and clarified the special reasons it takes to gain a use variance from a zoning ordinance. *See, also, Medici v. BPR Company,* 107 N.J. 1, 10, 18 (1987).

Moreover, the courts have recognized that special reasons for a use variance may be demonstrated by proof of undue hardship, that is, that the property at issue cannot reasonably be developed with a conforming use. *See, Medici v. BPR Company, supra.* Note .1 at page 4; *Burbridge v. Minehill Township, supra,* at 392-393.

There is no issue before this Court of an unresolved nature concerning the exhaustion of administrative remedies in the face of zoning ordinance restrictions.

It is recognized by the Appellate Division in their decision (Appendix B), that there is plainly no record on which to establish that any taking has occurred much less that any taking argument could be founded upon. Referring to the Constitution does not change the record that exists in this case. The record in this case was made at the trial level on vacancy decontrol founded upon law which has now been overturned and overruled by *Yee.* The Petitioner's Brief on the Petition recognizes the shortcomings but simply argues in conclusatory language that a taking has taken place and they should be heard. Nothing about the law or the record has changed since the trial level.

Finally, the Petitioner asserts that the Appellate Division, in effect, missed the nuance that the United States Supreme Court recognized, of the existence of a cause of action as founded in the

Yee decision. The fact of the matter is that the Appellate Division decision not only recognizes this Petitioner's argument on this Writ, but specifically addressed it and found that the *Yee* decision was on all fours in refuting Petitioner's argument. Petitioners pressed the argument despite the fact that the record in this case is inadequate to present the issue which this Petitioner wishes existed and is trying hard to present. However, simply stating that we cannot change the property or that to apply is futile does not provide sufficient basis for a cause of action much less a decision by this Court to grant the Writ. In the end, the decision which the Appellate Division made is all encompassing, addresses all the arguments presented and is in total accord not only with the United States Supreme Court decision in *Yee* but also New Jersey Case Law. *Matter of Plan for Orderly Withdrawals v. Twin City Fire Insurance Company,* 129 N.J. 389 (1992).

CONCLUSION

Based upon all the foregoing authorities, particularly under the controlling cases of *Yee*, the Mobile Home Village, Inc. Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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